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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2016

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THE HON'BLE MR.JUSTICE B.GOKULDAS

CRL.R.C. (MD) No.638 of 2016

Arunachalam : Petitioner/Petitioner/
De-facto Complainant
Vs.

The State represented by
The Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
(Crime No.213 of 2016)

: Respondent/Respondent/
Respondent

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, praying to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Tirunelveli District in Cr.M.P.No.4044 of 2016 vide its order dated 20.07.2016 and to set aside the same in so far as it relates to the return of cash and consequently direct the above said learned Judicial Magistrate to return the cash property namely Rs.7,47,000/- to the petitioner which amount is involved in connection with the case in Crime No.213 of 2016 pending on the file of the Inspector of Police, Panagudi Police Station, Tirunelveli District.

For Petitioner : Mr.R.Anand
For Respondent : Mr.P.Kandasamy
Government Advocate(Crl. Side)

O R D E R

This Criminal Revision has been filed to call for the entire records pertaining to the order passed by the learned Judicial Magistrate, Tirunelveli District in Cr.M.P.No.4044 of 2016 vide its order dated 20.07.2016 and to set aside the same in so far as it relates to the return of cash and consequently direct the above said learned Judicial Magistrate to return the cash property namely Rs.7,47,000/- to the petitioner which amount is involved in connection with the case in Crime No.213 of 2016 pending on the file of the Inspector of Police, Panagudi Police Station, Tirunelveli District.

2. The petitioner is the *defacto* complainant in Crime No.213 of 2016 registered by the respondent for the alleged commission of the offence under Section 394 I.P.C., altered 397 I.P.C., and



the offence said to have been committed on 31.05.2016. A perusal of the First Information Report would disclose that the petitioner/*defacto* complainant was a stamp vendor and he used to purchase the stamp papers from Rathapuram Treasury. On 31.05.2016 at about 9.00 a.m., he was proceeding towards treasury in his Hero Honda Splender and he was possessing Rs.10,90,350/- and he went towards Valliyoor at about 10.00 a.m., and he met one Siva Subramanian and received Rs.1,22,000/- for purchase of stamp papers and at 11.15 a.m., he went to Panagudy and met one Abdul Kalam Ashad and received a sum of Rs.5,80,000/- and entire amount was kept in a bag and returned from Panagudy towards his destination. Further, it has been alleged that at about 11.30 a.m., the petitioner approached Panagudy to Thandayarkulam Road, three persons coming on motor bike, attacked him with an Iron Rod and stole away the entire cash of Rs.17,92,350/- and also stole his two wheeler. Subsequently, the accused were arrested and Rs.7,47,000/- along with jewels and 4 motor cycles have also been recovered.

3. The petitioner/*defacto* complainant filed Cr.M.P.No.4044 of 2016, under Section 451 of the Code of Criminal Procedure, praying for interim custody of the cash, jewels and two wheeler belonging to him and seized from the accused, before the Court of the Judicial Magistrate, Valliyoor and the said petition was dismissed on 20.07.2016. Challenging the legality of the same, the present Revision is filed.

4. The learned counsel appearing for the revision petitioner would contend that it is not in serious dispute that the cash of Rs.7,47,000/- recovered from the accused belongs to the revision petitioner and since it is being possessed for business purposes, the petitioner is in urgent requirement of the said money and there cannot be any impediment in ordering the return of the cash by way of interim custody subject to the conditions.

5. This Court, after considering the rival submissions, facts and circumstances of the case and upon perusal of the typed-set of documents, is of the view that the prayer sought for by the petitioner is to be granted.

6. The Honourble Supreme Court of India, in the decision reported in 2002(10) SCC 283 (Sunderbhai Ambalal Desai v. State of Gujarat with C.M.Mudaliar vs. State of Gujarat), has considered the scope of Section 451 of the Code of Criminal Procedure, especially with regard to the return of valuable articles and currency notes and it is useful to extract the relevant portion, which reads thus:



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"Valuable articles and currency notes

Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police



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custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstance the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

7. As rightly pointed out by the learned counsel appearing for the petitioner, it is not in serious dispute that the stolen cash belongs to him and in the light of the above said pronouncement, there cannot be any difficulty in returning the said amount by way of interim custody.

8. In the result, the Criminal Revision Case is allowed and the impugned order dated 20.07.2016, made in Cr.M.P.No.4044 of 2016, on the file of the Court of the Judicial Magistrate, Valliyoor is set aside and the cash of Rs.7,47,000/- (Rupees Seven Lakhs and Forty Seven Thousand only) is ordered to be returned to the revision petitioner, subject to the following conditions:

(i) Taking photograph of the numbers of the currency notes with attestation of the Investigating Officer.

(ii) A Mahazar/note has to be prepared containing the denomination and currency numbers by the respondent and with the attestation/counter signature of the complainant/the accused and the attested witnesses of recovery mahazar. It shall be submitted to the Court of the Judicial Magistrate, Valliyoor.

(iii) The petitioner shall execute a personal bond for a sum of Rs.7,47,000/- (Rupees Seven Lakhs and Forty Seven Thousand only) with one surety for the like sum to the satisfaction of the Court of the Judicial Magistrate, Valliyoor.

(iv) On compliance of the above said conditions, a cash of Rs.7,47,000/- (Rupees Seven Lakhs and Forty Seven Thousand only) is ordered to be returned to the revision petitioner/defacto complainant by way of



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interim custody, with condition to produce the said amount whenever required by the Trial Court.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Valliyoor, Tirunelveli.

2. The Inspector of Police, Panagudi Police Station,
Tirunelveli District.

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

+1cc to Mr.R.Anand, Advocate in SR No.57287

Order made in
CRL.R.C. (MD) No.638 of 2016

Dated:
29.09.2016

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ANR/MPA/08.11.2016/5P/5C