

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL. REVISION CASE No.818 of 2017

Ramachandran

... Petitioner

Vs.

1. State by
The Inspector of Police,
District Crime Branch Police Station,
Nagapattinam.
Crime No.5 of 2013

2. G.Saravanan
(2nd respondent was impleaded as
per the order dated 4.7.2017 made
in Crl.M.P.No.8351/2017 in
Crl.R.C.No.818 of 2017.)

... Respondents

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order passed by the District Judge, Nagapattinam in Crl.M.P.No.1204 of 2016 dated 06.01.2017 and consequently direct the trial Court to refund the amount of Rs.6,35,000/- along with accrued interest thereon to the petitioner forthwith.

For Petitioner : Mr. C.Munusamy

For 1st Respondent : Mr.R.Sekar,
Govt. Advocate (Crl. Side)

For 2nd Respondent : No Representation.

ORDER

This Criminal Revision case has been filed against the order passed by the District Judge, Nagapattinam in Crl.M.P.No.1204 of 2016 dated 06.01.2017.

2. The petitioner had been arrayed as one of the accused in Crime No.5/2013 at the respondent police for the alleged offences punishable under Section 407 and 420 IPC.

Pursuant to the said case, he was arrested on 31.05.2013 and remanded to judicial custody. Hence, he moved a bail application and while considering the bail application, it was ordered on 14.06.2013 that the petitioner would be enlarged on bail on condition that he shall deposit a sum of Rs.6,35,000/- into the Court and also to execute a bail bond for a sum of Rs.50,000/-.

3. Accordingly, the petitioner had deposited the said sum of Rs.6,35,000/- on 24.06.2013 in the Court account. According to the petitioner, such a huge amount he was managed to mobilize only by getting loan, for which, every month he is paying huge interest.

4. Therefore, the petitioner had moved before the Court below with a petition under Section 439 and 441 of Cr.P.C. for the return of said amount of Rs.6,35,000/-.

5. The said petition was considered on merits and ultimately rejected by the Court below through the impugned order dated 06.01.2017.

6. The Court below by rejecting the application of the petitioner has stated the reason that, the amount of Rs.6,35,000/- in cash if it is available at bank, at any time it shall be disbursed to the depositors who have lost their money. However, if any bond is executed to that respect, as agreed by the petitioner, before the Court below, it was the view of the trial Court that, the said bond would no way helpful to the Court to disburse the amount if ultimately the defacto sufferers' case is proved. On these reasons, the request of the petitioner had been rejected by the Court below, through the impugned order.

7. I have heard Mr.C.Munusamy, the learned counsel appearing for the petitioner as well as Mr.R.Sekar, Government Advocate, Criminal Side for the 1st respondent.

8. The learned counsel appearing for the petitioner submits that in lieu of the said amount of Rs.6,35,000/-, the petitioner is ready and willing to give any property security worth about several lakhs of rupees. He would further submit that even if the said money of Rs.6,35,000/- is deposited in a Bank as directed by the Court below, that will not fetch much interest as the said amount in fact borrowed by the petitioner and deposited in the Court. Therefore, for the said amount the petitioner is paying some interest. Therefore, whatever interest accrued from the bank because of the deposit, that would not in any way match the interest being paid by the petitioner to the borrowers.

9. Therefore, the learned counsel for the petitioner would submit that to have clutch on the petitioner, the petitioner has come forward to give property security before the Court below and based on which the said amount of Rs.6,35,000/- can be returned back to the petitioner, in order to avoid heavy payment of interest by the petitioner every month, because of which, he is suffering a lot.

10. I have heard the learned Government Advocate also in this regard. Infact he supports the impugned order and its sustainability.

11. From the order impugned, it is known that the investigation has not yet been completed and charge sheet has not been laid. This Rs.6,35,000/- was a voluntary deposit, the petitioner had come forward at the time of considering his bail application. Therefore, only as a bail condition the said amount was directed to be deposited and accordingly, it was deposited in the Court account.

12. Till the impugned order was passed the amount was lying in the Court account without fetching any interest. Only after the impugned order, the learned Judge directed to deposit the amount in a Bank where the amount will get some bank interest.

13. However, with regard to the plea of the petitioner, he has borrowed the said money against the interest and for the said purpose he is paying every month substantial money by way of interest. Therefore, instead of keeping the amount in the bank if the money is returned back to the borrower, the petitioner need not pay the substantial sum by way of interest every month.

14. Infact the petitioner had come forward to execute a bond before the Court below, but not impressed upon the said offer made by the petitioner, the Court below rejected the said offer.

15. However, before this Court, the learned Counsel appearing for the petitioner, on instruction, has come forward to state that the petitioner is ready and willing to give the property security worth about several lakhs of rupees. In fact, the learned counsel for the petitioner today has produced the original sale deed in Document No.3110/2011 on the file of the Sub-Registrar, Sirgazhi under which a property was purchased by the petitioner in the year 2011 for a value of Rs.1,20,420/-. When the learned counsel appearing for the petitioner was questioned about the present value of the property he has stated

that its present value is about Rs.50,00,000/-. Be that as it may whether it is Rs.50,00,000/- worth or even lesser amount, certainly the property would be more valuable than Rs.6,35,000/-.

16. If this immovable property belongs to the petitioner is provided as security in lieu of the returning of the said amount of Rs.6,35,000/- which the petitioner deposited, this Court is of the view that, in order to have a clutch on the petitioner, this property security would be enough and based on which the money i.e Rs.6,35,000/- can be returned to the petitioner.

17. Accordingly, the following orders are passed in this revision case.

i) The petitioner shall execute a property security along with the sale deed (original) dated 12.09.2011 registered as document No.3110 of 2011 at the office of the Sub-Registrar, Sirgazhi stand in the name of the petitioner, as security, in the said Crime No.5 of 2013, District Crime Branch, Nagapattinam before the concerned Magistrate namely, Judicial Magistrate No.I, Nagapattinam, within a period of two weeks from the date of receipt of a copy of this order.

ii) On completion of the said property security execution by the petitioner as indicated above, the Court below shall return the amount of Rs.6,35,000/- presently lying with the bank as per the impugned order.

iii) It is made it clear that if the amount is still not deposited in the Bank, the same shall be returned to the petitioner on compliance of the condition No.1 above, forthwith.

18. With these directions, the Criminal Revision case is ordered.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

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To

1.The District Judge,
Nagapattinam.

2. The Judicial Magistrate No.I,
Nagapattinam.
3. -Do- thro the Chief Judicial Magistrate,
Nagapattinam.
4. The Inspector of Police,
District Crime Branch Police Station,
Nagapattinam.
5. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.C.Munusamy, Advocate Sr. 52968

Cr1.R.C.No.818 of 2017

SV(CO)
VR(17/8/2017)



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