

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.864 of 2017

Aiyyavu Plani

.. Petitioner

Vs

State Rep. by Inspector of Police,
T-12, Poonamallee P.S (Crime)
Chennai.
(Crime No.961/2015)

.. Respondent

PRAYER: Criminal Revision Case has been filed under Section 397 and 401 Cr.P.C., to call for the records on the file of the Judicial Magistrate, No.II Poonamallee, in Crl.M.P.No.1609/2017 dated 06.06.2017 and set aside the order.

For Petitioner : Mr.B.Mohanraj

For Respondent : Mr.R.Sekar
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case is filed against the order passed by the Judicial Magistrate No.II Poonamallee, in Crl.M.P.No.1609/2017 by order dated 06.06.2017.

2. The petitioner had moved a petition before the court below seeking interim custody of the property, i.e. currency of Rs.5,00,000/-.

<http://www.judis.nic.in> The case of the petitioner is that at the time of marriage of his daughter, on 21.11.2015, 35 Sovereigns gold jewels and cash of

Rs.35,000/- kept at the bride's room in the Kalyanamandapam were stolen. The petitioner had given a complaint on the same day before the respondent police.

3. The respondent police, on investigation, found that the accused had saved Rs.5,00,000/- in his Bank account. According to the prosecution, the accused is a habitual offender of stealing valuables from Kalyanamandapam at the time of marriage and other functions, and out of the sale proceeds of the stolen properties, the accused seems to have saved a sum of Rs.5,00,000/- in the Bank.

4. The further case of the petitioner is that since the petitioner has lost 35 sovereigns of gold jewels and Rs.35,000/- and the value of the gold would definitely fetch more than Rs.7,00,000/-, the sum of Rs.5,00,000/- saved by the accused in the Bank account would certainly be less than the actual value of the stolen goods. Therefore, the petitioner approached the Court below with a petition to have the interim custody of the said sum of Rs.5,00,000/-.

5. The petitioner also had submitted before the Court below that in lieu of the said Rs.5,00,000/-, in case interim custody is ordered, he would be ready and willing to execute proper security to the satisfaction of the Court below.

6. In response to the said petition, the prosecution in fact has expressed its no objection before the Court below. However, the learned Magistrate has dismissed the said petition on the ground that the accused has been in judicial custody and when he had been noticed about this petition, on behalf of the accused, objection was raised to state that Rs.5,00,000/- was not the sale proceeds of the stolen property but it was his own money. Therefore, in that context, the learned Magistrate has taken a view that the issue whether the said Rs.5,00,000/- belongs to the petitioner or otherwise can be decided only at the time of final disposal of the criminal case pending against the petitioner and therefore, at this stage, interim custody of the said amount of Rs.5,00,000/- cannot be ordered and accordingly, the said petition of the petitioner for interim custody of the money was dismissed. Assailing the said order, the present revision has been filed.

7. I have heard the learned counsel for the petitioner as well as Mr.R.Sekar, learned Government Advocate (Crl.Side) for the respondent.

8. It is the definite case of the petitioner that during his daughter's marriage, 35 sovereigns of gold jewels and Rs.35,000/- were stolen and immediately, he gave a police complaint, pursuant to which, on investigation, the police secured the accused and also recovered a sum of Rs.5,00,000/- and it seems that the police

obtained a statement from the accused where he seems to have stated that out of the sale proceeds, he has saved the said amount of Rs.5,00,000/-.

9. Whether the said amount of Rs.5,00,000/- was only out of the sale proceeds of the stolen properties of the petitioner or from any other sources, as according to the prosecution, the petitioner, is a habitual offender of stealing in this nature, probably, weighed in the mind of the learned Magistrate to take a decision whether the prayer of the petitioner could be considered favourably or it could be decided only at the time of final disposal of the criminal case.

10. Insofar as the prosecution is concerned, they have expressed their no objection for allowing the said petition even before the Court below.

11. This Court has considered the said facts of the case as well as the submissions made before this Court. The very same stand taken before the Court below by the prosecution is also taken before this Court. In the circumstances, the amount of Rs.5,00,000/- could be released for interim custody of the petitioner on condition of execution of property security in this regard. Hence the following order is passed in this case :

The petitioner shall be permitted to have the interim custody of the property i.e. Rs.5,00,000/- recovered in the said case, in Cr.No.961 of 2015, T.12, Poonamallee Police Station, on the petitioner executing an immovable property security to the value of Rs.5,00,000/- and also with a condition that whenever the said amount is required for further progress of the criminal case pending before the Court below, the petitioner shall produce the same before the Court below without fail.

12. In the above terms, the revision case is ordered.

19.07.2017

Index:Yes/no

mm/tar

To

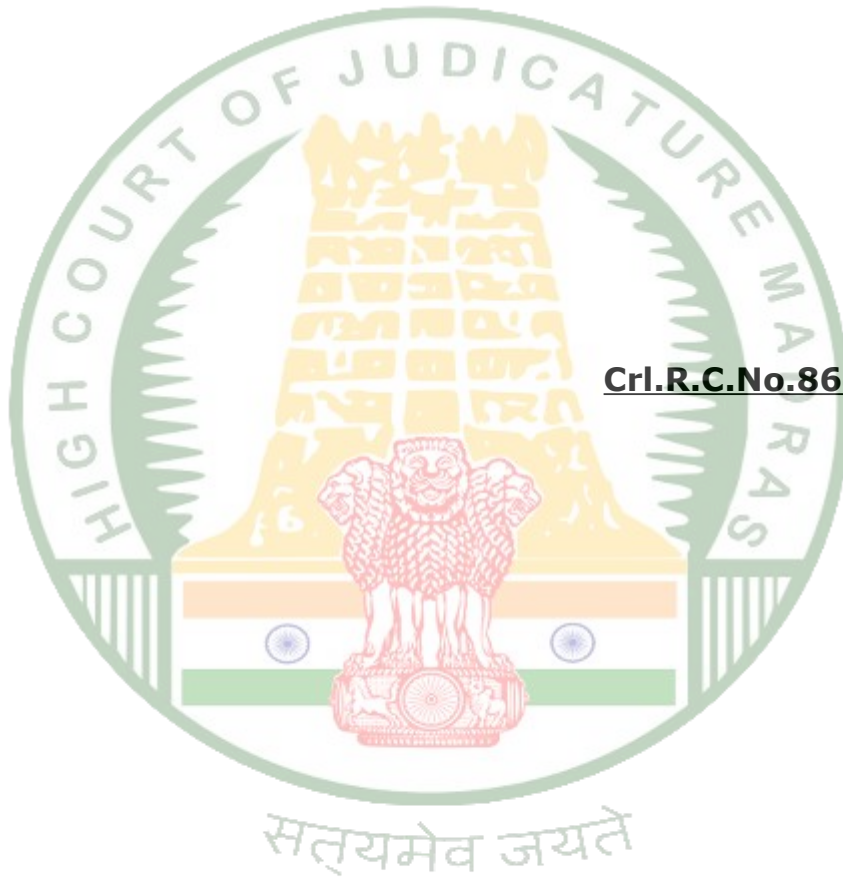
1. Inspector of Police,
T-12, Poonamallee P.S (Crime)
Chennai.

2. The Judicial Magistrate-II,
Poonamallee.

WEB COPY

R.SURESH KUMAR, J.

(tar)



Crl.R.C.No.864 of 2017

WEB COPY

19.07.2017