

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.01.2017

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THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.R.C.No.1615 of 2016

T.R.V.S.Sri Ramesh

.. Petitioner

vs.

State represented by
The Inspector of Police,
M1, Madhavaram Police Station
Chennai

... Respondent

Criminal Revision filed under section 397 and 401 Cr.P.C. praying to set aside the order passed by learned Judicial Magistrate, Thiruvottiyur in in C.M.P.No.2938 of 2015 in Crime No.1399 of 2015 by an order dated 25.11.2016

For Petitioner : Mr.V.Paarthiban

For Respondent : Mr.M.Mohammed Riyaz,
Government Advocate (Crl.side)

O R D E R

The petitioner is the defacto complainant in the case. Of a quantum of 700 boxes of cashew sought to be exported by him 182 boxes were stolen. Pursuant to complaint there regards case in Crime No.1399 of 2015 has been registered and from six accused alleged sale proceeds of Rs.8,50,000/- cashew sold had been recovered. Petitioner sought return of moneys by way of a petition u/s. 451 Cr.P.C in C.M.P.No.2938/2015. Against the dismissal thereof under orders dated 25.11.2016, the present revision stands filed.

2. Heard learned counsel for petitioner and learned Government Advocate (Crl.side).

3. The Hon'ble Apex Court in Sunderbhai Ambalal Desai v. State of Gujarat AIR 2003 Supreme Court 638, observed and held as follows:

"11.With regard to valuable articles, such as, golden or silver ornaments or articles studded with

precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C at the earliest.

12. 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.

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. 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 Sections 451, Cr.P.C to impose any other appropriate condition."

Following the said decision, the Hon'ble Karnataka High Court in Venkataraghavan v. State of Karnataka & another 2006 CRI.L.J. 1571 directed that :

"4. The seized currency notes shall be handed over to the respondent No.2-Smt. Shashi Prabha personally by the Presiding Officer of trial Court after,

- (a) getting detailed proper panchanama prepared of such notes.

The detailed panchanama of the currency notes in question should be drawn by the Registrar of the City Civil and Sessions Court, Bangalore in the presence of two panchas and in the actual and physical presence of the Presiding Officer of the trial Court.

- (b) taking photographs of such currency notes at the expense of State.

The photographs of such notes shall be taken in the presence of Registrar of City Civil and Sessions Court, Bangalore and the same shall be preserved by the trial Court to be marked during trial. The trial

Court should see that photographs of currency notes are attested or counter signed by the accused and respondent No.2 herein (complainant), the Registrar of City Civil and Sessions Court and two panchas.

(c) after taking self bond to the extent of about Rs.2 lakhs from complainant which one surety for the like sum".

4. Considering the facts on hand, this Court is of the view that it would be appropriate to pass orders on similar lines as that of the Hon'ble Karnataka High Court with some modification. Accordingly, this Court directs that trial Court viz., Judicial Magistrate, Thiruvottiyur, to effect the return of sum of Rs.8,50,000/- to the petitioner after:

(a) getting detailed proper panchanama prepared of such notes.

The detailed panchanama of the currency notes in question should be drawn by such Court Officer as designated by the learned Judicial Magistrate, Thiruvottiyur, in the presence of two panchayatdars and in the actual and physical presence of the Presiding Officer of the trial Court.

(b) causing a videograph of such currency notes at the expense

of the petitioner

The videograph shall be taken in the presence of such Court Officer as designated by the learned Judicial Magistrate, Thiruvottiyur and two panchayatdars and the same shall be preserved by the trial Court to be marked during trial. A certificate is to be recorded by the Court officer as also the two panchayatdars and the person recording the videograph informing the place, time of recording the same. Such certificate shall also be marked along with the videograph in the course of trial.

(c) after taking self bond to the extent of about Rs.8,50,000/- from complainant which one surety for the like sum.

5. This Criminal Revision is disposed of with the above direction.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

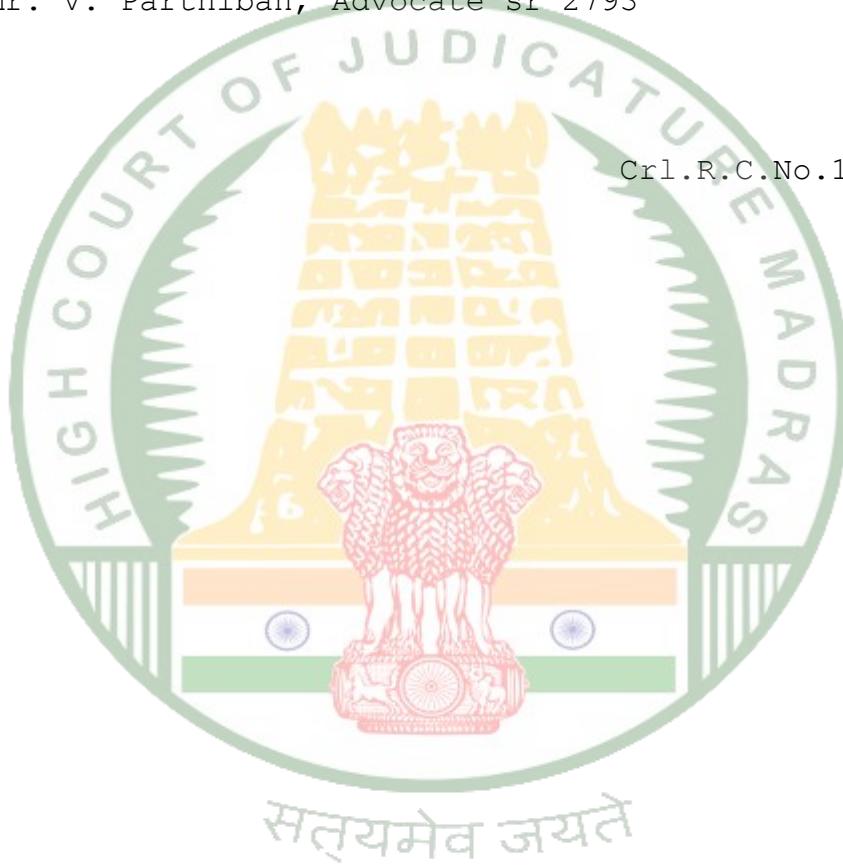
To

1. The Judicial Magistrate, Thiruvottiyur
2. The Inspector of Police,
M1, Madhavaram Police Station
Chennai
3. The Public Prosecutor,
High Court, Chennai.

+1 CC to Mr. V. Parthiban, Advocate sr 2793

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