

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2017

CORAM

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**

Crl.M.P.No.7129 of 2017
and
Crl.R.C.No.SR23434 of 2017

K.Sri Lakshmi

...Petitioner

Vs.

1. Sivaji

Manager, M/s. Whiteclifs Hair Studio Pvt. Ltd.,
23/8, Second Street, Venus Colony,
Alwarpet, Chennai – 18.

2. The State by rep:-

The inspector of Police,
E-3, Teynampet Police Station,
Chennai.

3. Arunraj

...Respondents

Prayer in Crl.M.P.:- Petition filed under Section 482 of the Criminal Procedure Code, 1973 praying to accept the cause title of the above revision petition.

Prayer in Crl.R.C.:- Criminal revision case is filed under Section 397 & 401 of the Criminal Procedure Code, 1973 praying to allow the revision and set aside the order dated 12.05.2017 passed in Crl.M.P.No.1254 of 2017 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.Sunder Mohan

For Respondents

R1 : Mrs.Narmadha Sampath

R2 : Mr.C.Iyyapparaj
Additional Public Prosecutor.

ORDER

This petition has been filed to accept the cause title of the above referred revision case.

2. According to the petitioner some properties/materials belonging to her had been seized by the respondent police, from the shop premises run by the petitioner, on the pretext that they were stolen by the accused, who is none other than the husband of the petitioner. The said seized properties were produced before the Court below. The first respondent, who is the authorized representative of the defacto complainant, had filed a petition before the Court below under Section 451 of Cr.P.C. seeking interim custody of those goods seized from the premises of the petitioner.

3. The learned Magistrate, after hearing the first respondent therein as well as the respondent police in the said case, has passed an order on 12.05.2017 in CrI.M.P.No.1254 of 2017 in F.I.R.No.806 of 2017. By the said order, the learned Magistrate directed the goods to be given to the first respondent for interim custody on condition that the first respondent shall execute a bond for a sum of Rs.80,000/- and also on condition that the first respondent shall not tamper or alter the goods and he shall produce the same as and when required by the Court and also on condition that those goods should be photographed.

4. Pursuant to the said order, the said goods, which, according to the learned counsel appearing for the first respondent, worth about Rs.2,00,000/-, had been given interim custody to the first respondent. Aggrieved by the said order passed by the learned Magistrate, the petitioner has moved the above referred criminal revision case. As the petitioner is not a party to the proceedings before the Court below, she has filed this petition along with the revision to accept the cause title.

5. Heard Mr.Sunder Mohan, learned counsel appearing for the petitioner and Mrs. Narmadha Sampath, learned counsel appearing for the first respondent and Mr. C.Iyyapparaj, learned Additional Public Prosecutor for the State.

6. It is argued by Mr.Sundar Mohan, learned counsel appearing for the petitioner that properties in question, which had been given for interim custody to the first respondent, are actually belonging to the petitioner, as the petitioner had purchased the same against the bills, which, the petitioner is ready to produce the same, before any forum and that being so, it is the case of the petitioner that since the goods seized from the premises of the petitioner are belonging to the petitioner, the same should not have been entrusted to the first respondent by way of interim custody.

7. The learned counsel appearing for the petitioner would also submit that in the petition filed by the first respondent under Section 451 of Cr.P.C. seeking interim custody of the goods, at least the accused, who is none other than the husband of the petitioner, should have been heard. The learned counsel would further state that in this case, before passing the order impugned in this revision case, no notice was served on the accused person and only after hearing the first respondent as well as the prosecution-State, the said order was passed. Therefore, the learned counsel would submit that the order impugned is infirm and the same is assailable.

8. Per contra, Mrs.Narmadha Sampath, the learned counsel appearing for the first respondent would submit that the first respondent's employer is running a Hair studio, where the accused person, i.e., the husband of the petitioner, had been working as employee and after some time, he left the job and only after some time, the first respondent's employer came to know that some goods were stolen by the accused, based on which, a complaint had been lodged on behalf of the first respondent's employer. Based on the said complaint, the police started investigation and accordingly the police had found that the stolen goods were stored in the shop running by the petitioner from where it was seized. Only on that strength, the learned counsel for the first respondent claims that interim custody of at least some of the goods worth about Rs.2,00,000/-, which had

been seized by the police from the premises of the petitioner was sought for. Therefore the learned counsel for the first respondent would submit that those goods seized from the premises of the petitioner are the goods stolen by the husband of the petitioner and therefore, rightly the first respondent on behalf of his employer had filed the petition under Section 451 of Cr.P.C, which was heard by the learned Magistrate and after hearing the petitioner i.e, the first respondent as well as the prosecution, the same was ordered. Therefore, the learned counsel for the first respondent would submit that there is no infirmity in the order passed by the Court below. The learned counsel for the first respondent would also submit that if at all the petitioner has got any grievances over the manner in which the petition filed under Section 451 of Cr.P.C. by the first respondent was decided by the Court below, she can very well approach the Court below by filing appropriate petition and it is for the learned Magistrate to accept or not the same, on its merits.

9. On considering all these factual matrix as projected by the respective learned counsel, this Court is of the view that the only grievance of the petitioner over the impugned order is that, no notice was given to the accused person as well as the petitioner. Therefore the said order passed by the learned Magistrate concerned is not in accordance with the procedure which has to be followed by the Magistrate while disposing the petition under

Section 451 of Cr.P.C.

10. Considering the avernments stated in the petition filed in support of the petition, this Court is of the considered view that the petitioner can approach the Court below and file suitable petition stating all these facts that the goods seized from the premises of the petitioner, belonging to the petitioner.

11. Had such a petition been filed by the petitioner, this Court has no hesitation to hold that the learned Magistrate should have given anxious consideration and passed order in the said petition.

12. At any rate, now it is open to the petitioner to approach the Court below by filing appropriate petition in the manner known to law and if such petition is filed, the learned Magistrate shall take into consideration the said petition and after hearing the petitioner as well as the first respondent and the respondent State, a decision can be arrived at on merits and in accordance with law.

13. It is made clear that unless the decision is arrived at in such petition, to be filed by the petitioner on the property in question, which was already given to the custody of the first respondent, the first respondent shall

continue to be the custodian of the property and the first respondent shall follow the conditions imposed by the learned Magistrate in the order, which is impugned herein. Once the decision is arrived in such petition to be filed by the petitioner, it is needless to state that the parties shall abide by the order to be passed by the learned Magistrate.

14. With these observations this petition is dismissed.

10.08.2017

Speaking/Non speaking Order
Index :Yes/No

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To

1. The Presiding Officer,
XVIII Metropolitan Magistrate,
Saidapet, Chennai

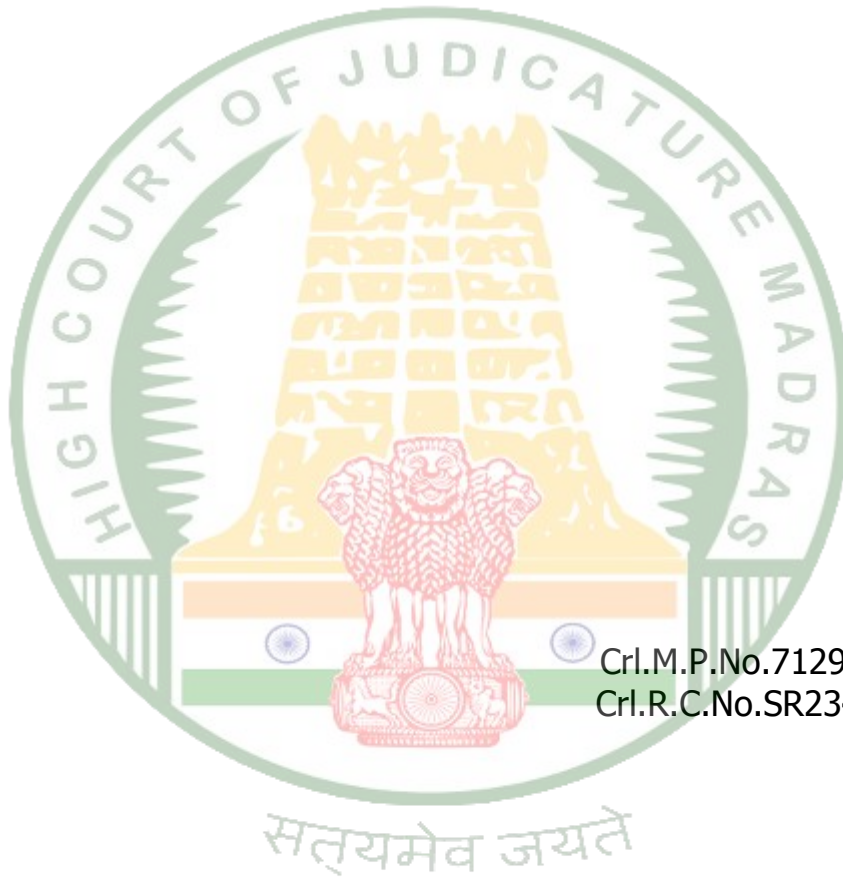
2. The Inspector of Police,
E-3, Teynampet Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

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R.SURESH KUMAR,J.

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