

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.11552 of 2017

Srirengarajan

..

Petitioner

Vs.

State by:

The Inspector of Police

R-3, Ashok Nagar Police Station,
Chennai.

..

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., praying to direct the learned Additional District and Sessions Judge (Fast Track Court No.II), Chennai to return the M.O.8 to M.O.22 which were already marked in S.C.No.228 of 2007 (Judgment dated 31.10.2011) to the petitioner.

For Petitioner :

Mr.K.R.Ramesh Kumar

For Respondent :

Mr.P.Govindarajan
Additional Public Prosecutor.

ORDER

Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing on behalf of the respondent.

2.The brief facts of the case is as follows:

a)In a case of murder for gain, the petitioner's mother was killed on 11.03.1994 and the jewels of his mother and wife including a sum of Rs.40,000/- were found missing. An FIR in Cr.No.463 of 1994 came to be registered, in which a final report was filed against Muthukumar and Anbazhagan for the offence under Section 302 IPC along with other offences in PRC.No.3798 of 1994. Since one of the accused Muthukumar has absconded, the case was split up in the year 2007 and renumbered as PRC.No.99 of 2007 which is pending before the learned XVII Metropolitan Magistrate, Saidapet, Chennai. Insofar as Anbazhagan is concerned, the case was committed to the learned Principal Sessions Judge, Chennai in S.C.No.228 of 2008 and three charges were framed against him and in order to prove the charges, P.W.1 to P.W.10 were examined and Exs.P1 to P22

were marked along with material objects M.O.1 to M.O.22. In the material objects marked, M.O.8 to M.O.22 were jewellerys and cash stolen from the petitioner's mother. The learned Additional District and Sessions Judge (Fast Track Court No.I), Chennai found the accused guilty and punished him to undergo life imprisonment on 19.02.2007. As against the same, an appeal in CrI.A.No.145 of 2008 was filed before this Court by Anbazhagan which came to be allowed and the matter was remitted back to the trial Court for determining the claim of Juvenility. Consequently, the learned Additional District and Sessions Judge, (Fast Track Court No.II), Chennai was pleased to acquit the accused by judgment dated 31.10.2011 in which it was observed that the Material Objects would be decided in the Split up case in PRC.No.99 of 2007 which is pending before the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

b)The said Split up case is pending from the year 1994, since the accused Muthukumar has been absconding till date. Hence, the petitioner had filed a petition under Section 452 of Cr.P.C., on 09.01.2017 for return of the material objects in M.O.8 to M.O.22.

The petition was returned on 11.01.2017 stating that since the property was ordered to be decided in PRC.No.99 of 2007 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, the petition is not maintainable. Again on 01.02.2017, the petitioner filed another petition under Section 452 Cr.P.C., which also came to be returned on 18.02.2017 on the ground of maintainability. Once again on 04.04.2017, another application was filed by the petitioner under Section 452 of Cr.P.C., to return M.O.8 to M.O.22 which was also returned since the earlier petition was returned on 11.01.2017. It is in this background, the present petition under Section 482 Cr.P.C., has been filed seeking for return of the material objects viz., M.O.8 to M.O.22.

3. Admittedly, the case in P.R.C.No.99 of 2007 (split up case) is pending for the past 23 years. In view of the same, the petitioner who is the legal representative of the deceased Late Nagalakshmi has been deprived of using the cash marked as M.O.8 & M.O.9. Likewise, the jewels of his mother marked as M.O.10 to M.O.22 may also deteriorate since it has not been used and maintained. In this circumstance, there is no impediment on the

part of the trial Court to entertain the petitioner's application and could have secured material objects by directing the petitioner to provide sufficient bond for the safe custody of the items instead of returning the petition filed under Section 452 of Cr.P.C.

4.I am of the view that the petitioner cannot be made to wait indefinitely to get back his mother's jewels and cash to which he is entitled and may have sentimental value also. Even taking a pragmatic view on the other hand, ultimately the petitioner is the only legal heir of the Late Nagalakshmi, of course, he must be required to prove that he is only the legal heir who is entitled for the material objects. In this background, the criminal original petition is to be allowed.

5.In fine, the learned Additional District and Sessions Judge (Fast Track Court No.II), Chennai is directed to return the material objects viz., M.O.8 to M.O.22 marked in S.C.No.282 of 2007 vide judgment dated 31.10.2011 to the petitioner on the following conditions:

a)The petitioner shall furnish sufficient bond for the safe

custody of the material objects viz., M.O.8 to M.O.22.

b)The petitioner shall also swear to an affidavit undertaking to produce the material objects viz., M.O.8 to M.O.22 as and when required by the learned Additional District and Sessions Judge (Fast Track Court No.II), Chennai.

c)The petitioner shall also produce the certified copy of the legal heirship certificate of his mother Late Nagalakshmi and only on satisfaction of the same, the material objects must be given and such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

6.With the above observations and direction, the Criminal Original Petition stands allowed.

सत्यमेव जयते

14.07.2017

Index:Yes/No

DP

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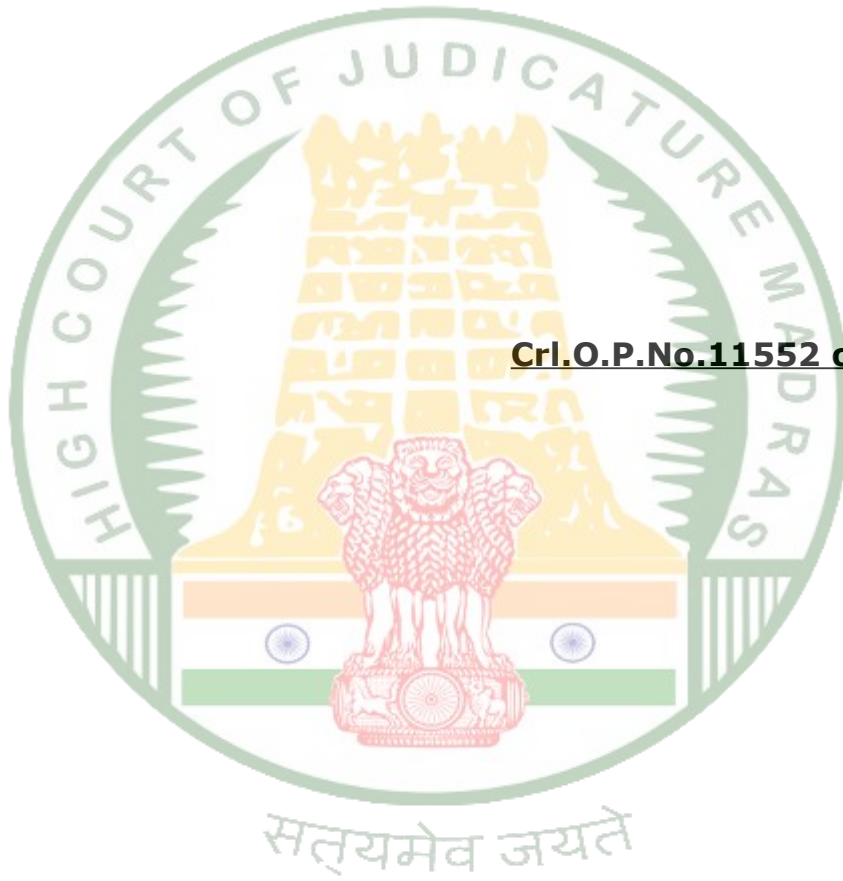
1. The Inspector of Police,
Chidambaram Town Police Station,
Cuddalore District.
2. The Additional Public Prosecutor,
High Court, Madras.



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M.S.RAMESH.J,

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