



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.06.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.149 of 2017

Orders Reserved on 21.03.2017

Kasamuthu : Petitioner / Petitioner

Vs.

The State
The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District. : Respondent / Respondent

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the order passed in Cr.M.P.No.6779 of 2016, by the Judicial Magistrate, Tenkasi, dated 16.12.2016 and order interim custody of the sum of Rs.93,350/-, as sought for by the petitioner with him, which was seized by the respondent in Crime No.209 of 2016.

For Petitioner :Mr.D.Venkatesh

For Respondent :Mr.A.Kannithevan,
Government Advocate(Crl. Side)

O R D E R

This Revision has been filed praying to set aside the order passed in Cr.M.P.No.6779 of 2016, by the Judicial Magistrate, Tenkasi, dated 16.12.2016 and order interim custody of the sum of Rs.93,350/-, as sought for by the petitioner with him, which was seized by the respondent in Crime No.209 of 2016.

2. The petitioner herein is the sole accused in Crime No.209 of 2016, dated 14.05.2016 registered by the respondent Police under Sections 171(E), 171(H) and 188 of IPC. The case of the prosecution is that on 14.05.2016, while the Election Code of Conduct was in force, the petitioner was illegally distributing <https://hcmvscs.courts.gov.in/hcmvscs/> voters within Tenkasi Constituency and the petitioner along with a sum of Rs.93,350/- and a two wheeler viz., TVS Scooty, bearing Registration No.TN-76-L-5069 was caught hold



red handedly by the Flying Squad, Tenkasi Assembly Constituency / the Block Development Officer, Tenkasi and the same were produced before the respondent Police on 14.05.2016 and the said case was registered against the petitioner and the investigating is pending.

WEB COPY

3. The petitioner filed Cr.M.P.No.6779 of 2016, before the learned Judicial Magistrate, Tenkasi under Section 451 Cr.P.C., and praying for return of the cash amount of Rs.93,350/- to the petitioner stating that he borrowed that amount and was in possession at the time of alleged occurrence and he is the owner of that amount, which was part of the loan amount of Rs.1,00,000/-, borrowed from one S.A.Mahaboob Masood, on executing a pro-note for his family expenses and also discharge of small loans.

4. The respondent Police herein filed a written objections stating that the said cash amount and the two wheeler seized from the petitioner were handed over to the District Revenue Officer, for initiating procedure. The learned Judicial Magistrate, Tenkasi dismissed the said petition by its order, dated 16.12.2016, after hearing both sides stating that the seized cash amount was not remanded by the respondent in this case and was not handed over before the learned Judicial Magistrate, but he cash amount was said to be handed over to the District Revenue Officer, for initiating proceedings and hence, the petitioner is not entitled to get any relief, as prayed for in that petition.

5. Aggrieved by that order, the petitioner / accused filed the present Revision to set aside the order, dated 16.12.2016 passed in Cr.M.P.No.6779 of 2016, by the learned Judicial Magistrate, Tenkasi and ordered interim custody of a sum of Rs.93,350/-, to the petitioner herein.

6. The learned counsel appearing for the petitioner would submit that, if any property is seized in pursuance of registration of an FIR, under Penal Provisions, the same has to be produced only before the Jurisdictional Magistrate and as such, the respondent has no authority to produce the amount before the District Revenue Officer; that the learned Judicial Magistrate has every power under Section 457 Cr.P.C., to direct the respondent to produce the seized property viz., sum of Rs.93,350/-, before the Court; that the learned Judicial Magistrate erred in dismissing the petition on the ground that the amount was not produced before the Court and that the respondent through District Revenue Officer is taking steps to produce the amount before the Government
<https://hccasescourts.gov.in/cases.html> Hence, the impugned dismissal order is liable to be set aside.



7. The learned Government Advocate (crl.side) appearing for the respondent, on instructions, would submit that by relying the averments made in the counter filed by the respondent that in fact, the seized property has not been produced before the Court till date and the respondent is taking steps to produce the said seized property before the Government Treasury through the District Revenue Officer and therefore, the Court below has not committed any mistake in dismissing the petition filed by the petitioner in Cr.M.P.No.6779/2016 and hence, the Revision is liable to be dismissed.

8. Perused the materials available on record and heard and considered the rival submissions made by either side.

9. Admittedly, the petitioner is the sole accused in this case against whom FIR was registered and is pending for investigation. The petitioner was arrested and a cash amount of Rs.93,350/- was seized from the petitioner / accused. The seized amount was also not produced before the concerned Magistrate Court so far by the respondent Police. No record is produced by the respondent to show that the seized amount has been handed over through the District Revenue Officer, for initiating proceedings against the petitioner.

10. Admittedly, no Notice served upon the petitioner in the alleged confiscation proceedings initiated by the District Revenue Officer so far. This Court points out that "under Section 457 of Cr.P.C., a Court of Law has power to order release of property seized from any person in connection with an offence, even though the property was not produced and the trial of the main case has not commenced, as per the decision of the Hon'ble Supreme Court in Ram Prakash Sharma Vs. State of Hariyana reported in AIR 1978 SC 1282.

11. The reasons assigned for dismissal of the Miscellaneous Petition by the Court to the effect that the property was not produced before the Court and further that the confiscation proceedings were to be initiated and as such, the property could not be ordered to be returned are clearly unsustainable in the eye of law. It cannot be forgotten that the orders passed under both Sections 451 and 457 Cr.P.C., are during the pendency of the trial or enquiry.

12. As far as the present case is concerned, the cash amount of Rs.93,350/- was seized from the petitioner / accused pertaining to the offence in Crime No.209 of 2016 of the respondent in Police, but the amount was not produced before the concerned Court by the respondent. No record is produced to show that the confiscation proceedings are initiated against the



petitioner in respect of the seized amount and is pending. This Court also taken into consideration the decision of this Court **Balamurugan Vs. State Rep.by the Inspector of Police, Prohibition Enforcement Wing (PEW, PS.,) Pattukkottai, Thanjavur** reported in (2016(1) TNLR 339) relied on by the counsel appearing for the petitioner.

13. In the result, the Criminal Revision is allowed and the order passed by the learned Judicial Magistrate, Tenkasi in Cr.M.P.No.6779 of 2016, dated 16.12.2016, is set aside for the reasons assigned in this Criminal Revision Petition. Further, this Court, in the interest of justice, directs the respondent Police to produce the cash amount of Rs.93350/-, to the petitioner / accused before the learned Judicial Magistrate, Tenkasi, within a period of one week from the date of receipt of a copy of this order. Thereafter, the said cash amount may be handed over to the petitioner / accused, as interim custody, on the following conditions:-

(i) The Petitioner / Accused shall execute a bond for a sum of Rs.93,350/- along with one surety like a sum to the satisfaction of the learned Judicial Magistrate, Tenkasi.

(ii) Panchanama has to be prepared in respect of the currency notes given, as interim custody, signed by the petitioner / accused in the presence of the respondent Police and to be filed along with the case records.

(iii). The petitioner should give an undertaking to produce the cash amount of Rs.93,350/-, as and when required before the competent authority / Court, as and when called for.

Sd /-

ASSISTANT REGISTRAR (CS-I)

/TRUE COPY/

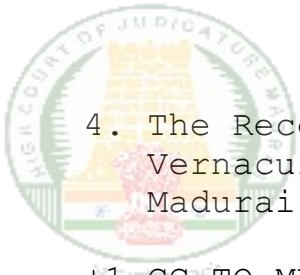
SUB ASSISTANT REGISTRAR

To

1.The Judicial Magistrate,
Tenkasi.

2.The Inspector of Police,
Tenkasi Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,



4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1 CC TO MR.D.VENKATESH, ADVOCATE, SR NO.59034

WEB COPY

MPK

MAS/JC/SAR2:19.06.2017:5P-6C

Order made in
Crl.RC (MD) No.149 of 2017
Dated:-
08.06.2017