



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Cr1.R.C. (MD) No.367 of 2017

Bharath

... Petitioner

Vs.

State Rep.by
The Inspector of Police,
Tallakulam Police Station,
Madurai City.

... Respondent

PRAYER: The Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records relating to the order dated 27.03.2017 in Cr1.M.P.No.947 of 2017 in Cr.No.367 of 2017 passed by the Judicial Magistrate Court No.II, Madurai and set aside and hand over the articles to the petitioner.

For Petitioner : Mr.A.Arputharaj

For Respondent : Mr.C.Mayilvahan Rajendran, APP

O R D E R

This Criminal Revision case is filed to set aside the order dated 27.03.2017 in Cr1.M.P.No.947 of 2017 in Cr.No.367 of 2017 passed by the Judicial Magistrate Court No.II, Madurai.

2.The learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent are present and heard. This criminal revision is taken up for final hearing at the admission stage itself, with consent of either side.

3.The case of the prosecution is that when the respondent Police has searched the house of the first accused at Mubarak Mansil Compound, Door No.25, B.P.Kulam, Chekkizhar 2nd Street, Madurai District, they seized one Samsung cell phone and also a sum of



Rs.8,800/- and the same were produced before the Judicial Magistrate No.II, Madurai and now it is in the custody of the concerned Court.

4.The petitioner has filed a petition in Cr.M.P.No.947 of 2017 before the court below seeking interim custody of the said cell phone and also cash of Rs.8,800/-. The court below by order dated 27.03.2017 dismissed the said petition on the ground that there is no proof of ownership in respect of the cell phone as well as the amount. Aggrieved by this, the petitioner is before this Court with the present Criminal Revision case.

5.The learned counsel for the petitioner has filed a bill dated 26.10.2015 for purchasing the said cell phone. It is also admitted in the FIR itself that the said Samsung cell phone and a sum of Rs.8,800/- were seized from the custody of the petitioner / accused No.7.

6.The learned Additional Public Prosecutor appearing for the respondent submitted after verifying the said bill that the said bill relates to the seized cell phone in this case. He also submitted that the petitioner herein is arrayed as A7 in this case and investigation is pending.

7.The ownership of the seized cell phone is admitted by the respondent Police and the properties were seized from the petitioner herein and there is no rival claimant against the seized properties. Hence, the order of the court below is set aside and the petitioner is entitled to the interim custody of the seized properties from the Court concerned as per the dictum laid down in Sundarbhai Ambalal Desai Vs. State of Gujarat reported in [2003 (1) CTC 175 (SC)]. Accordingly, this Court is inclined to order as under:

(i)The order dated 27.03.2017 in CrI.M.P.No.947 of 2017 passed by the Judicial Magistrate No.II, Madurai is hereby set aside.



(ii) The learned Judicial Magistrate No.II, Madurai is directed to handover the properties namely, Samsung cell phone and the amount for Rs.8,800/- to the petitioner as interim custody on execution of personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) to the satisfaction of the magistrate concerned.

(iii) The Samsung cell phone shall be photographed at different angle, on the cost of the revision petitioner herein and it shall be in the case records and the signature of the petitioner shall be obtained on them.

(iv) The Panchanama is to be prepared before handing over the property in question to the petitioner herein.

(v) The petitioner should not alter or alienate the property, till the disposal of the case.

(vi) The petitioner shall cause production of the said property as and when required by the concerned Judicial Magistrate.

8. With the above directions, this Criminal Revision case is ordered accordingly.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court No.II,
Madurai.

2. The Inspector of Police,
Tallakulam Police Station,
Madurai City.

+1cc to M/S.A.ARPUTHARAJ, Advocate SR.No.93863.

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nbj