



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.05.2017

CORAM:

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THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Crl.RC(MD)Nos.553 to 560 of 2016

[Orders Reserved on 10.11.2016]

D.MATHIMARAN	: PETITIONER IN CRL.RC (MD) NO.553 OF 2016
R.M. NAGALINGAM	: PETITIONER IN CRL.RC (MD) NO.554 OF 2016
ILAMAHIZHAN @ MAHIZHAN	: PETITIONER IN CRL.RC (MD) NO.555 OF 2016
A.NAGARAJ	: PETITIONER IN CRL.RC (MD) NO.556 OF 2016
G.SIVARAJA	: PETITIONER IN CRL.RC (MD) NO.557 OF 2016
S.SENTHIL @ SENTHIL MURUGAN	: PETITIONER IN CRL.RC (MD) NO.558 OF 2016
S.RAJA POORNA CHANDRAN	: PETITIONER IN CRL.RC (MD) NO.559 OF 2016
D.VENKATAGIRI	: PETITIONER IN CRL.RC (MD) NO.560 OF 2016

Vs.

THE INSPECTOR OF POLICE,
THIRUNAGAR POLICE STATION,
MADURAI DISTRICT
IN CR.NO.169 OF 2011

: RESPONDENT IN ALL THE PETITIONS.

Common Prayer: Criminal Revision cases filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order of the learned Judicial Magistrate No.VI, Madurai, in Cr.M.P.No.2838, 2843, 2839, 2845, 2840, 2841, 2844 and 2842 of 2016 respectively in C.C.No.339 of 2013, dated 26.07.2016 and set aside the same and order custody and possession of the amount Rs. 10,00,000/-, Rs.5,00,000/-, Rs.10,00,000/-, Rs.10,00,000/-, Rs. 10,00,000/-, Rs.5,00,000/-, Rs.10,00,000/-, and Rs.15,00,000/- respectively along with the respective accrued interest which is under the custodia legis of learned Judicial Magistrate Court No.VI, Madurai in Property Register Number 178 of 2011.

For Petitioners : Mr.Niranjan S.Kumar
(In all cases)

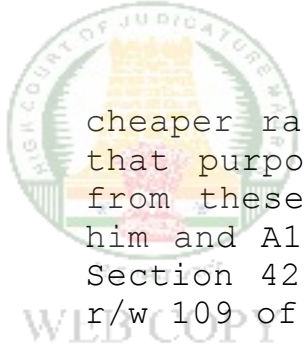
For Respondent : Mr.P.Kandasamy,
Govt.Advocate (crl.side)
(In all cases)

**COMMON ORDER**

These Revision Petitions have been filed against the separate common orders passed by the learned Judicial Magistrate No.VI, Madurai in Cr.M.P.Nos.2838 to 2845 of 2016, seeking return of cash of Rs.10,00,000/-, Rs.10,00,000/-, Rs.10,00,000/-, Rs.5,00,000/-, Rs.15,00,000/-, Rs.5,00,000/-, Rs.10,00,000/- and Rs.10,00,000/- respectively, totally a sum of Rs.75,00,000/-, out of the seized amount, which is in the custody of the Court.

2. On the basis of the written complaint given by one Mr.Raja Poorna Chandran, who is the Revision Petitioner herein in CrI.R.C(MD)No.559 of 2016 (CrI.M.P.No.2844 of 2016), the Inspector of Police, Thirunagar Police Station registered a case in Crime No.169 of 2011, under Section 420 r/w 109 of IPC., against one Mr.Vivekananthan @ Venkatesan (2) Brindha W/o. Vivekanandan @ Venkatesan and (3) Kevin C/o.Vivekanandan. According to the First Information Report, the first accused made a representation stating that, while he was working in Mauritius, he purchased 24 Carat Jewels and Gold Biscuit and that jewels and biscuit were pledged here for a small amount to meet the family expenditures and for his business needs and when he wanted to redeem the jewels to save the interest amount, he approached the petitioner to arrange money to the tune of Rs.75,00,000/- and as the petitioners was not having such a huge amount and at the persuasion and insistence of the accused, the petitioner arranged money through his friends, who are the other petitioners herein, by pledging their jewels and also by borrowing from friends and the above said money was given to the accused in their house on 28.03.2011 on the assurance that the accused would redeem the jewels next day and return the money with some normal interest. But thereafter, the petitioner was not able to contact the accused and he came to know subsequently that the accused have cheated the petitioner. Based on the above allegation, the said case was registered. The accused No.1 and 2 were arrested. During the course of investigation, currency notes to the tune of Rs.1,22,00,000/-, Gold Biscuits, 3 Cars and a two wheeler were seized from the first accused on his confession. As many as 34 items of gold jewels weighing 75486 grams, a Rolex Wrist Watch, Titan Wrist Watch and currency notes Rs.2,00,000/- were also seized from the second accused on her confession. All the said properties have been now handed over to the Court. On completing the investigation, charge sheet was filed and is pending as C.C.No.313 of 2016, on the file of the learned Judicial Magistrate No.VI, Madurai. While so, the petitioner filed Cr.M.Ps before the trial Court seeking return of the cash property and the same were dismissed by the learned Judicial Magistrate. It is against the same, they have come up with these Revisions.

<https://hcservices.ecourts.gov.in/hcservices/> According to the respondent in the charge sheet that the first accused made a false statement that he was in Mauritius and he purchased the gold jewels and gold biscuits from Mauritius at a



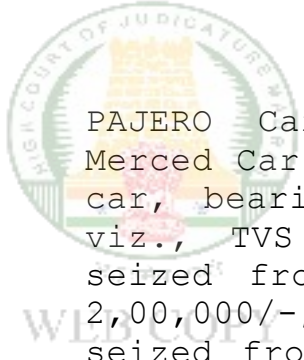
cheaper rate and sell the same in India for higher rates and for that purpose, assuring good return, he collected various amounts from these petitioners. The 2nd and 3rd accused also joined with him and A1 and A2 are liable to be punished for the offence under Section 420 IPC and A3 is liable to be punished under Section 420 r/w 109 of IPC.,

4. The revision petitioners claim ownership of their cash individually, on the basis of the confession statement given by the first accused in this case, while he was arrested during investigation. The cash as well as the gold biscuits, cars and two wheeler were seized on his confession and were remanded to the custody of the Court in this case. The respondent seized not only the cash but also the other property from the accused in this case on their confession.

5. Admittedly, the earlier petitions filed by the revision petitioners, for return of interim custody of their cash amount were dismissed by this Court and also by the Apex Court. Subsequently, the Revision Petitions in CrI.R.C.(MD)Nos.227 to 234 of 2015 were dismissed by this Court on merits vide its order dated 02.07.2015. No appeal is preferred against the dismissal order passed by this Court. It is further admitted that their case is pending as C.C.No.339 of 2017 on the file of the learned Judicial Magistrate No.VI, Madurai and the accused in this case are still absconding, though this Court has already directed the respondent Police to execute the NBW issued against the accused to ensure the speedy trial in this case. This Court has already held in the previous Revision Petitions filed by the petitioners before this Court that the entitlement of the petitioners could be decided only at the final hearing of the case. The seized amount in this case has been invested in a Fixed Deposit, in the Nationalized Bank. This Court has already rejected the request of the of the petitioners, as they are even prepared to give Bank Guarantee for the cash to be released in their favour. The alleged confession statement recorded by the first accused is also not signed by the first accused, though the cash and other case properties were seized from the first accused, under seizure mahazar.

6. Perused the records produced by the petitioners herein and also heard the arguments advanced by either side.

7. A case has been registered on 20.04.2011 by the respondent against three accused in Crime No.169 of 2011, for the offences punishable under Section 420 of IPC., on the basis of the written complaint given by one Thiru.Raja Poorna Chandran / the Revision Petitioner in CrI.R.C.(MD)No.559 of 2016. During investigation A1 and A2 were arrested on 01.05.2011 and 06.05.2011 respectively and A3 was arrested on their confession, cash amount of different denomination totally Rs.1,22,00,000/-, one gold biscuit, weighing 1 Kg, 2 Gold Biscuits weighing each 100 gms, 3 Cars viz. (i)



PAJERO Car, bearing Registration No.PV-01-BG-9797, (ii) BENZ Merced Car, bearing Registration No.GA-7E-9797 and (iii) CHEVERLET car, bearing Registration No.TN-57-U-7804 and one two wheeler viz., TVS Vega, bearing Registration No. No.GA-07-J-0074 were seized from A1, under seizure Mahazar and cash amount of Rs. 2,00,000/-, 94 Sovereigns of gold jewels and 2 wrist watches were seized from A2 and all the said properties have been now handed over to the Court. While the first accused was taken to Judicial Magistrate Court, Panaji, he escaped from the custody of the Police by attacking the Police personnel and FIR also came to be registered against him in Crime No.138 of 2011, under Sections 224, 332 and 506(i) of IPC., on the file of Panaji Police Station, Goa. While the 2nd accused was arrested and remanded to judicial custody in Central Jail, Tiruchi and she was latter admitted in Government Hospital, Tiruchi for medical treatment and from there, she escaped from the hospital and as such, a case has also been registered as against her in Crime No.52 of 2011, on the file of Government Hospital Police Station, Uraiyur Circle, for the offences punishable under Sections 223 and 224 of IPC. Insofar as the 3rd accused is concerned, his whereabouts not known. Hence, final report was filed in Crime No.169 of 2011 and has been taken on file as absconding charge sheet and is pending as C.C.No.339 of 2013, on the file of the learned Judicial Magistrate No.VI, Madurai and all the accused were absconding and NBW are pending against them.

8. The petitioners have stated that a part amount of Rs. 86,85,000/- have been deposited in P.R.C.No.178 of 2011 in this case. Apart from the jewels, gold bars and vehicles, which were seized from the accused are deposited in that R.R.No.178 of 2011.

9. All the Revision Petitioners had been claiming their amount of Rs.75,00,000/-, as mentioned in the FIR, as if they were defrauded from them. All the petitione filed individually claiming their share amount in CrI.M.P.Nos.4027 to 4034 of 2011 and were dismissed by the trial Court, as per the order, dated 11.06.2011. Against the above order of dismissal, CrI.R.C. (MD)Nos.526 to 533 of 2011 were preferred before this Court, which also dismissed the Revisions, as per the order, dated 11.01.2012 holding that when the investigation is in the initial stage, as rightly held by the learned Judicial Magistrate, it shall not be in the interest of justice to entrust the interim custody of cash to the petitioners and directing the investigation officer to make all efforts to secure the accused and complete the investigation and submit the final report at an early date, preferably, within a period of three months from the date of receipt of a copy of the order.

<https://hcservices.ecourts.gov.in/hcservices>
 10. Aggrieved by that order of dismissal, the petitioners filed Special Leave Appeal in CrI.R.C.Nos.3314 to 3321 of 2012 before the Hon'ble Apex Court and were dismissed by that Court on

07.05.2012 and thereafter only, an absconding charge sheet was filed on 02.10.2013 and is pending as C.C.No.339 of 2013 on the file of learned Judicial Magistrate No.VI, Madurai.

11. The petitioners again came with the similar Revision Petitions viz., Crl.R.C.(MD)Nos.227 to 234 of 2015 against the order of dismissal, dated 30.04.2015 in Crl.M.P.Nos.1919 to 1926 and the said Revision Petitions were also dismissed by this Court in its order dated 02.07.2015 holding that the entitlement of the petitioners could be decided only at the final hearing of the case and directing the respondent Police to execute the NBW issued against the accused so as to ensure the speedy trial in this case. No appeal is preferred against the above findings.

12. Once again the petitioners filed Cr.M.P.Nos.2838 to 2845 of 2016 by approaching the learned Judicial Magistrate No.VI, Madurai, and were again dismissed on 26.07.2016, on the ground that the relief, as claimed by the petitioners had already been rejected by the order of Hon'ble Apex Court as well as by this Court and hence, the petitions are not maintainable. Aggrieved by the same, the petitioners have preferred the present Revision Petitions before this Court.

13. The claim of the petitioners has been rejected already by this Court and also by the Apex Court. This Court had already given a finding in Crl.R.C.(MD)Nos.227 to 234 of 2015 by its order dated 02.07.2015 that the entitlement of the petitioners could be decided only at the final hearing of the case and has directed the respondent to execute the NBW against the accused so as to ensure the speedy trial in this case.

14. The alleged confession statement of A1, which is relied by the petitioners for their claim was not signed by the concerned accused. The said confession does not contain the name of the other petitioners and their claim of amount, except the complainant, who is the petitioner in Crl.R.C(MD)No.513 of 2017 and the said confession would not have any evidenciary value for any purpose at present, since A1 has not signed in that confession. The vehicle viz., Scorpio, bearing Registration No.TN-41-Q-8817 does not find a place in the seizure mahazar, dated 01.05.2011 relied by the petitioner in this case. Hence, the order made in Crl.M.P.No.5582 of 2015, dated 01.04.2016 of learned Judicial Magistrate No.VI, Madurai cannot come to their rescue for change of circumstances. Hence, the present Revisions are not maintainable, since they have been already decided rejecting their claim.

15. Considering the above facts and circumstances of the case, the Court is not inclined to interfere with the common order passed in Cr.M.P.Nos.2838 to 2844 of 2016, dated 26.07.2016 passed of the learned Judicial Magistrate No.VI, Madurai.



16. In the result, the Revision Petitions stand dismissed.

Sd/-

Assistant Registrar(P&A)

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/True Copy/

Sub Assistant Registrar.

To

1. The Judicial Magistrate No.VI,
Madurai.

2 Do Thro'The Chief Judicial Magistrate, Madurai.

3. The Inspector of Police,
Thirunagar Police Station,
Madurai District

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

+1CC to M/S. Niranjan S.Kumar, Advocate, SR.No. 56449

Order made in
Cr1.RC(MD)Nos.553 to 560 of 2016
Dated:-
11.05.2017

MPK

AM/MR/19.05.2017/6P/6C