



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B. GOKULDAS

Crl.R.C. (MD) .No.827 of 2016

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P.Prabhakaran .. Petitioner/Petitioner/Accused No.5

Vs.

The State of Tamil Nadu
Represented by its
Sub Inspector of Police,
Thallakulam Police Station,
Madurai. .. Respondent/Respondent/Complainant

Prayer:- Criminal Revision petition is filed under Section 397 r/w 401 Cr.P.C. to call for records relating to order passed by Judicial Magistrate No.2, Madurai in Cr.M.P.No.3137 of 2016 in Cr.No.1957 of 2016, dated 07.10.2016, and set aside the same and allow the said petition as prayed for.

For Petitioner :Mr.N.Dilip Kumar

For Respondent :Mrs.S.Prabha (Crl.Side)
Government Advocate

ORDER

The Criminal Revision case is filed to call for records relating to order passed by Judicial Magistrate No.II, Madurai in Cr.M.P.No.3137 of 2016 in Cr.No.1957 of 2016, dated 07.10.2016, and set aside the same.

2. Learned counsel on either side present and heard.

3. The petitioner is arrayed as 5th accused in Crime No.1957 of 2016 on the file of the respondent police for offences under Sections 3(2)(a), 4(2)(C), 5(1)(a) and 7(1)(a) of Immoral Traffic (Prevention) Act of 1956. The case of the respondent police is that they raided the premises of A1 and A2, wherein they secured the custody of A1 and A2, and thereafter, they secured the custody of A5/the petitioner herein and A6, who visited the premises as customers. It is further stated in the FIR that the respondent police recovered a mobile phone and cash of Rs.7,675/-. In these circumstance, the petitioner filed a petition in Crl.M.P.No.3137 of 2016 before the learned Judicial Magistrate No.2, Madurai under Sections 451 and 457 of Cr.P.C. praying for a direction to the



respondent police to produce the recovered articles and thereupon hand over interim custody of the same to the petitioner. However, the said petition was dismissed vide order, dated 07.10.2016. Challenging the same, the petitioner has filed the criminal revision case for the relief as stated earlier.

4. The learned counsel for the petitioner submitted that the petitioner is the lawful owner of the above said properties. He further submitted that the learned Trial Judge ought to have returned the properties to the petitioner on terms and conditions to furnish appropriate sureties in the light of the conditions enumerated by the Hon'ble Apex Court in more than one decisions. Hence he prayed to allow this revision.

5. Learned Government Advocate (Criminal Side) submitted that though investigation completed and charge sheet also filed by the respondent police concerned, the same is yet to be taken cognizance by the jurisdictional Magistrate.

6. This Court, after considering the rival submissions, facts and circumstances of the case and upon perusal of the typed-set of documents, is of the view that the prayer sought for by the petitioner is to be granted.

7. The Honourble Supreme Court of India, in the decision reported in **2002(10) SCC 283 (Sunderbhai Ambalal Desai v. State of Gujarat with C.M.Mudaliar vs. State of Gujarat)**, has considered the scope of Section 451 of the Code of Criminal Procedure, especially with regard to the return of valuable articles and currency notes and it is useful to extract the relevant portion, which reads thus:

*"Valuable articles and
currency notes*

*Valuable articles such as
golden or silver ornaments or
articles studded with precious
stones, need not be kept in
police custody for years till
trial is over. The Magistrate
should pass appropriate orders as
contemplated under Section 451
CrPC at the earliest. For this
purpose, if material on record
indicates that such articles
belong to the complainant at
whose house theft, robbery or
other offence has taken place, then
seized articles be handed over to
the complainant after:*



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(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstance the investigating officer should keep such articles in custody for a longer period for the purposes of



*investigation and identification.
For currency notes, similar
procedure can be followed."*

8. Considering the facts and circumstances of the case and also following the above said decision and also considering the fact that the investigation is completed, this Court is inclined to grant the relief of return of properties to the petitioner as interim custody and hence, the order passed by the learned Judicial Magistrate No.II, Madurai, in Crl.M.P.No.3137 of 2016 in Cr.No.1957 of 2016, dated 07.10.2016, is set aside and the interim custody of the properties namely mobile phone and cash of Rs.7,675/-, which were seized by the respondent police in Crime No.1957 of 2016, are directed to be given to the petitioner on the following conditions:-

- (1) Taking photograph of the numbers of the currency notes with attestation of the Investigating Officer.
- (2) A Mahazar/note has to be prepared containing the denomination and currency numbers by the respondent and with the attestation/counter signature of the complainant/the accused and the attested witnesses of recovery mahazar. It shall be submitted to the Court of the Judicial Magistrate No.II, Madurai.
- (3) The petitioner shall execute a personal bond for a sum of Rs.7,675/- (Rupees Seven Thousand six hundred seventy five only) with one surety for the like sum to the satisfaction of the Court of the Judicial Magistrate No.II, Madurai.
- (4) On compliance of the above said conditions, a cash of Rs.7,675/- (Rupees Seven Thousand six hundred seventy five only) is ordered to be returned to the revision petitioner/A5 by way of interim custody, with condition to produce the said amount whenever required by the Trial Court.
- (5) The petitioner shall produce the proof of ownership of the mobile.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Sub Inspector of Police,
Thallakulam Police Station,
Madurai.



2.The Judicial Magistrate No.II,
Madurai.

+1CC to M/S.N.Dhilipkumar, Advocate, SR.7286

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