

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2018

Coram
THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.263 of 2018

S.Babu

... Petitioner

vs

1. The State Rep. by,
Sub Inspector of Police,
Walajahpet Police Station,
Vellore District.

2.Baskaran

... Respondents

(R2 Suo motu impleaded as per the order
of this Court dated 12.03.2018 in
Crl.R.C.No.263 of 2018)

Prayer : Criminal Revision Petition filed under Sections 397 and
401 of Code of Criminal Procedure, against the order in
CMP.No.185 of 2018 dated 01.02.2018 passed by the learned
Judicial Magistrate No.II, Walajahpet.

For Petitioner : Mr.K.Manikandan

For Respondents : Mr.G.Ramar (for R1)
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case is filed challenging the order
of dismissal made in Crl.M.P.No.185 of 2018 dated 01.02.2018 on
the file of the Learned Judicial Magistrate II, Walajhapet.

2.The petitioner herein filed Crl.M.P.No.185 of 2018 before
the Learned Judicial Magistrate No.II, Walajhapet for return of
property claiming that the respondent police has seized
Rs.34,000/- from the 1st accused in connection with crime No.15
of 2018 for the offence under Sections 378 and 430 of I.P.C. who
is the brother of petitioner.

3.The learned Counsel for the petitioner would submit that
the petitioner's brother Mr.Baskaran was arrested by the
respondent police on 09.01.2018 in connection with sand theft
case and from him a sum of Rs.34000/- was seized by the
respondent police which is now under Court custody.

4. According to the Learned Counsel for revision petitioner, the amount seized by the respondent police belongs to the petitioner herein and therefore it has to be returned to him.

5. It is the petitioner's case that on the alleged date of occurrence i.e., on 10.01.2018 early morning at 06.00 A.M. the petitioner herein gave a sum of Rs.34,000/- to his brother Baskaran with a request to pay the same to one Mr. Venu who is residence of Poondi towards a chit amount, however the same was seized by respondent police as if the petitioner's brother involved in sand theft case.

6. As stated above, the revision petitioner filed petition under Section 451 of Cr.P.C to return the cash amount of Rs.34,000/- to him which is in court custody and the same is marked in C.P.No.19 of 2018.

7. Now the petitioner herein required the said amount for the purpose of eye operation of his father Sundharam. The Learned Government Advocate (Criminal Side) strongly opposed the petition to return of cash to the petitioner herein. Hence the Learned Magistrate dismissed the application with a direction to the Court officer to deposit the said amount by way of FDR in any nationalized bank. The said order is under challenge in this Criminal Revision Case.

8. The Learned Counsel for appearing for the revision petitioner strenuously contented that Learned Magistrate failed to adhere to the guidelines issued by the Hon'ble Supreme Court in the matter of return of property in Sundar Bhai Ambalal Desai Vs. State of Gujarath, reported 2003 (1) CTC 175 (SC).

9. The learned Counsel would further submit that in an identical issue our Hon'ble High Court following the Judgment of Hon'ble Apex Court cited Supra, allowed the Criminal Revision Case in Crl.R.C.No.212 of 2016 dated 21.07.16, wherein, our High Court ordered to return the currency notes to the revision petitioner therein after entering the currency note Numbers in property register and photographs may be taken.

10. The learned Counsel for petitioner herein by stressing the argument that the above said Judgment of our Hon'ble High Court would squarely applicable to the facts of present case on hand also and therefore prays this Hon'ble Court to allow this Criminal Revision Case.

11. The Learned Government Advocate (Criminal side) appearing for State strongly objected to allow the Criminal Revision Case, contending that the property was seized from the accused at the time of his arrest and therefore it is false to state that the cash amount of Rs.34,000/- belongs to the petitioner herein.

12. I have heard Mr.K.Manikandan, Learned Counsel appearing for the petitioner and Mr.G.Ramar, Learned Government Advocate

(Criminal side) appearing for the respondent and also perused the records.

13.From the perusal of records, undisputedly no one has claimed the right of ownership of the property, except the petitioner herein, accordingly there is no rival claim over the return of property sought for in Crime No.15 of 2018.

14.In this context, it is useful to refer the judgment of the Hon'ble Supreme Court and our High Court cited supra, wherein, this Court has held that when there is no rival claim, the currency notes recovered from the accused could be handed over to the owner by putting certain reasonable conditions that he should execute surety bond.

15.The above said principle of law squarely applicable to the facts of the present case also. However, the learned Magistrate failed to follow the guide lines issued by the Hon'ble Apex Court and our High Court.

16.In view of the same, I am of the opinion that this Criminal revision Case is liable to be allowed with certain conditions.

17.In the result:

a) the Criminal Revision Case is allowed and the order made in CrI.M.P.No.185 Of 2108 dated 01.02.2018 on the file of the learned Judicial Magistrate No.II, Walajahpet, is set aside;

b) the Learned Magistrate is directed to take photo copy of the currency notes worth of Rs.34,000/- which is mentioned in the petition in CrI.M.P.No.185 of 2018;

c) the petitioner herein is directed to execute surety bond for a sum of Rs.34,000/-;

d) thereafter, the learned Judicial Magistrate No.II, Walajahpet is directed to hand over Rs.34,000/- to the petitioner herein which was seized by the respondent police in Crime No.15 of 2018 (C.P.No. 19/2018);

e) the payment of Rs.34,000/- to be made to the petitioner herein is subject to the outcome of the result of the trial in connection with Crime No.15 of 2018 on the file of the respondent police. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.II,
Walajahpet.

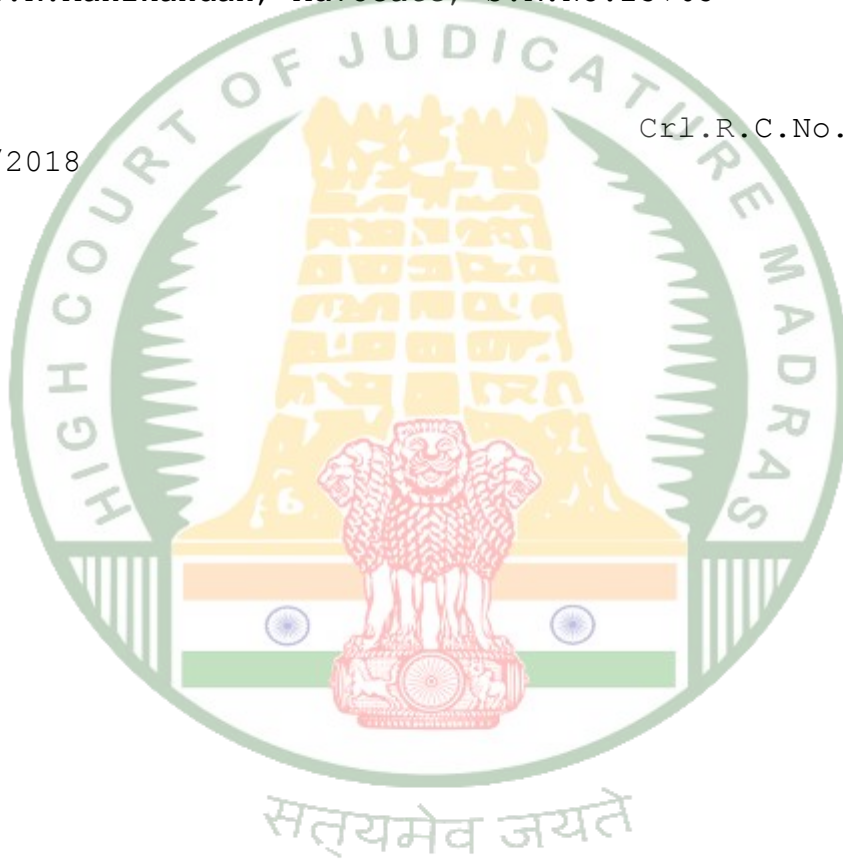
2.The Sub Inspector of Police,
Walajahpet Police Station,
Vellore District.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.Manikandan, Advocate, S.R.No.23765

rrs 08/10/2018

CrI.R.C.No.263 of 2018



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