

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.271 of 2018

N.P.Sivakumar

...Petitioner/Petitioner/Accused

-vs-

State by

Inspector of Police,
Gingee Police Station,
Villupuram District.

... Respondent/Respondent/Complainant

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order passed by the learned Judicial Magistrate, Gingee in C.M.P.No.6070 of 2017 dated 20.12.2017 in dismissing the petition partly and to allow the petition in full for return of parties seized by the police for interim custody pending investigation in Crime No.846 of 2017 on the file of the respondent police.

For Petitioner : Mr.A.Natarajan, Senior Counsel
For Mr.C.P.Palanichamy

For Respondent : Mr.R.Suriya Prakash
Govt. Advocate (Crl.Side)

O R D E R

The petitioner/accused has filed this petition, seeking return of his articles, which were seized by the respondent police under six recovery mahazars in connection with the Crime No.846 of 2017 on the file of the respondent police.

2. The case of the prosecution is that the petitioner has been running a Finance Company in the name and style of NSN Finance and the complainant borrowed a sum of Rs.1,80,000/- for 3 paise interest by mortgaging the family properties to the company. It is alleged that the complainant has so far remitted Rs.50,000/- towards interest alone and due to his family circumstances, he did not pay interest for five months. It is also alleged that on 08.11.2017 at about 7.30am, the employees of the said Finance Company entered into his house and abused the complainant in filthy language by using unparliamentary

words and threatened the complainant and his family members. Hence, the petitioner lodged a complaint before the respondent police, pursuant to which, a case in Crime No.846 of 2017 came to be registered against the petitioner herein for the offences under Sections 147, 120(B), 294(b), 384, 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

3. The respondent police, after registration of the case, started recovering articles from the office of the petitioner, such as cash of Rs.6,80,615/-, account ledgers, bond papers and connected documents, mobile phones, counting machine, CCTV camera, Digital Video Recorder and Hard Disk, Money lending license, a copy of sale deed, various loan security documents, two wheeler RC books, Income Tax return challans etc., number 309 documents on 09.11.2017 at 16:30hrs. The petitioner moved the learned Judicial Magistrate, Gingee for return of all the articles by way of filing a petition in C.M.P.No.6070 of 2017. It is the grievance of the petitioner that the petition was partly allowed in respect of cash, mobile phones, CCTV recorder and Hard Disk and the same was rejected in respect of other articles.

4. Learned Senior Counsel for the petitioner has submitted that the respondent police, exceeding their limits, have seized all the documents, which were not connected with the alleged transactions and there is a special authority prescribed under the Money Lenders Act for recovery of articles and the respondent police have got no jurisdiction to seize the documents. Learned Senior Counsel has further submitted that the complainant has preferred the false complaint only with an intention to grab more money from the petitioner and the allegations levelled against the petitioner are highly motivated one for the purpose of evading repaying of the loan amount borrowed by him. Contending that the petitioner has been normally fixing the rate of interest as prescribed under law and the provisions of Tamil Nadu Prohibition of Charging Exorbitant Act, 2003 will not attract, he prayed for return of the balance articles.

5. On the other hand, learned Government Advocate (Crl.Side) has vehemently opposed this petition, stating that the documents sought to be returned are void and unenforceable documents as per Section 10(iii) of Money Lenders Act and its real owner has to be ascertained. The petitioner has not shown any proof as to his ownership to the documents and in some of the documents, there were no particulars regarding the exact

date of execution and therefore, such return will affect the case under investigation and become fatal to the prosecution case. Therefore, it is prayed that the petition filed by the petitioner lacks merits and is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the respondent.

7. It is stated by the petitioner that he along with his parents and wife formed a partnership firm in the name of N.S.N.Finance at Gingee in the year 2013 and have been carrying out the business activities without violating the existing laws and procedures. They are in possession of Money Lending License duly issued by the authorities concerned and have become income tax assesseees too. While so, the respondent police have searched his office premises on the basis of a false complaint purported to have been given by one Mari and had taken away articles and documents, which are not related to the issue on hand. It is further stated by the petitioner that he and others had already obtained anticipatory bail in this case and a quash petition in Crl.O.P.No.29018 of 2017 was also filed by his parents and wife, in which, stay of the investigation was granted.

8. A stand was taken by the respondent police that there is no reference as to the ownership of the documents and the petitioner has failed to prove that such documents really belong to him. Admittedly, it is not the case of the respondent police that those documents have not been seized from the premises of the petitioner and once it is admitted that those documents were seized from the possession of the petitioner, it cannot be expected that the petitioner has to prove his ownership for receipt of those documents, but, however, stringent conditions can be imposed, while returning those documents for avoiding its misuse and in this regard, this Court is in agreement with the submission of the learned Senior Counsel for the petitioner that insofar as the return of properties is concerned, there is no need to analyze its title and its possession is sufficient to decide the issue.

9. At this stage, it is relevant to extract the passage from the judgment of Vivian Bose, J. in Sangram Singh v. Election Tribunal (1955 AIR 425), which states that "Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of

interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it".

10. In view of what is stated hereinabove, this Court is of the view that there is absolutely no justification with the respondent police, seeking retention of the documents everlastingly without reasonableness and therefore, the order dated 20.12.2017 passed by the learned Judicial Magistrate, Gingee in C.M.P.No.6070 of 2017, merely on the basis of the objection raised on the side of the respondent police, has no legs to stand and is liable to be set aside.

11. In the result,

a) this Criminal Revision Petition is allowed, setting aside the order dated 20.12.2017 passed by the learned Judicial Magistrate, Gingee in C.M.P.No.6070 of 2017;

b) the petitioner is directed to file an undertaking before the learned Judicial Magistrate, Gingee to the effect that he will not use those documents for any illegal purpose, will not destroy them till the conclusion of the entire proceedings and produce the same before any Court of Law, as and when required for examination/verification;

c) the learned Judicial Magistrate, Gingee, on receipt of such undertaking affidavit from the petitioner, is directed to return the balance/remaining documents being kept under the Court's custody to the petitioner forthwith.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ar/vs
To:

1. The Judicial Magistrate,
Gingee.
2. The Chief Judicial Magistrate,
Villupuram.(for information)

3. The Inspector of Police,
Gingee Police Station,
Villupuram District.

4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.P.Palanichamy, Advocate Sr.19606

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srg 29/06/2018



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