

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2018

DELIVERED ON: 28.08.2018

CORAM

THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.66 of 2017

Anvar @ Anvar Sadath ... Petitioner

vs.

The Inspector of Police,
Madhukkarai Police Station,
Coimbatore,
Crime No.583/2016 ... Respondent

Criminal Revision Case is filed under sections 397 and 401 Cr.P.C. to set aside the Order dated 20.10.2016 passed in Crl.M.P.No.9877 of 2016 on the file the Judicial Magistrate No.VII, Coimbatore.

For petitioner : Mr.R.Karthikeyan
for M/s.V.Balamurugane
For respondent : Mr.R.Suriyaprakasam
Government Advocate (Crl. Side)

ORDER

This Criminal Revision Case has been filed by the petitioner challenging the order passed by the learned Judicial Magistrate No.VII, Coimbatore in Crl.M.P.No.9877 of 2016, dated 20.10.2016, dismissing the petition filed by the petitioner for interim custody of Rs.76,81,500/-.

2. The petitioner herein has filed a petition invoking the provisions of Section 451 of Cr.P.C. seeking interim custody of the seized amount of Rs.76,81,500/- on the ground that a complaint has been lodged by the driver of the petitioner viz., Anand, who does not know the fact that cash was kept in the car. In fact, the amount was sent by the petitioner's friend from Chennai through the vehicle bearing registration No.TN-06 L 9898. Now the amount was seized by the police and kept in judicial custody. Since the seized money belongs to the petitioner, he had filed the petition seeking interim custody of the seized amount. If the amount was not returned to the petitioner, he would be put to irreparable loss and damage.

3. The petition filed by the petitioner was opposed by the State contending that the prime accused viz., Kodali Sridhar and Arun, are absconding and the investigation has not yet been completed.

4. Finding that the petitioner has not filed any proof to show that the seized money to the tune of Rs.76,81,500/- which was stated to be sent by his friend belongs to him, the learned Judicial Magistrate No.VII, Coimbatore dismissed the petition. Assailing the same, the petitioner has filed the Criminal Revision Case.

5. Resisting the Criminal Revision Case, the respondent filed counter stating that on 22.9.2016, in various places at different times, the respondent arrested the accused Nos.1 and 2 and seized Rs.2 lakh and Rs.1 lakh respectively from them. The respondent had also arrested accused No.3 on 22.9.2016 and seized a sum of Rs.7 lakhs from him. It is stated in the counter that on 23.9.2016 in various places at different times, he arrested accused Nos.4 to 6 and recorded their confession statements. He seized Rs.31 lakhs from accused No.4; Rs.25 lakhs from accused No.5 and Rs.10,81,500/- from accused No.6 in the presence of witnesses and as on the date of filing of the counter, he seized Rs.76,81,500/- with regard to Crime No.583 of 2016 and the same was produced before the learned Judicial Magistrate No.VII, Coimbatore.

6. The learned counsel for the petitioner submitted that the learned Judicial Magistrate erred in dismissing the petition for return of property without a proper perusal of the circumstances of the case. He would submit that the learned Judicial Magistrate failed to note that the seized property represents the amount which had been sent by the petitioner's friend. According to the counsel, the learned Judicial Magistrate had failed to note that the petitioner was a business man and therefore, would be involved in dealing with cash which is properly accounted for. The learned counsel then argued that the learned Judicial Magistrate erred in dismissing the petition without considering the consequences of loss to the petitioner and prayed for setting aside the same.

7. Per contra, the learned Government Advocate (Criminal Side) contended that since the petitioner has failed to show any material that the seized money belongs to the petitioner and hence the learned Judicial Magistrate has rightly dismissed the petition. He would submit that the investigation is in part and therefore, there is no necessity to hand over interim custody of the seized money to the petitioner and prayed for dismissal of the Criminal Revision Case.

8. I have considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate

(Criminal Side) and also perused the materials available on record.

9. The case in Crime No.583 of 2016 on the file of Madukkarai Police Station was registered under Section 395 IPC based on the complaint lodged by one Anand. In his complaint, the complainant Anand stated that on 25.8.2016 at about 4.15 A.M., he was returning in the car bearing registration No.TN-06 L 9898 - Nissan Terrano along with his friends Sigas, Mohamed and Muneer and when they were nearing Toll Gate after crossing Karpagam College Junction, three unknown persons, who were wearing police uniform, waylaid them. He immediately stopped the car and they came near the car and informed that they were police and they want to check the car. One of the persons took the car key and they stated that they want to enquire and asked them to board into Bolero vehicle and after taking them for about four kilo meters, they compelled the complainant to get down from the car and they took the car towards Pollachi. Thereafter, he rushed to Madukkarai Police Station and lodged a complaint.

10. The respondent has filed a status report dated 05.03.2018. In the status report, the respondent has stated that one Mohammed Basheer of Pudupettai, Chennai was examined and his statement reveals that it was he who had sent secretly (without the knowledge of the complainant and others in the car) sent in the Car Nissan Terreno a sum of Rs.3,90,00,000/- to the petitioner. In his status report, the respondent also stated that all efforts taken by him to identify and secure accused Kodali Sreetharan and his son Kannan @ Arunkumar and seize the remaining amount ended in vain and he laid charge sheet against 9 accused on 3.7.2017 showing the accused Kodali Sreetharan and his son as absconding. It has also been stated that all efforts are being taken to trace out the absconding accused as also to recover the remaining amount and the amended charge sheet would be filed, if needed.

11. On a perusal of the records, it is seen that on 31.1.2017 the petitioner has filed an affidavit, affirmed on 27.1.2017, stating that in Nissan Terrano SUV car bearing registration No.TN-66 L 9898, a sum of Rs.3,90,00,000/- was transported and the said amount belonged to him, which was transported by one Mohammed Basheer residing at Chennai, who is a friend of him. He also stated that the complainant had no knowledge about the cash that was carried in the car. In his affidavit, the petitioner stated that he was doing luxurious cars buying and selling business and this Court may order to hand over the cash to him. He is also undertaking and agreeing to indemnify this Court in the event of any claims, demands, proceedings, losses, damages, charges and expenses which may be incurred by this Court by reason or in consequence of this Court's order to return the property. He is also ready to produce the cash as and when required by this Court and further

undertake to subject himself to any action that may be initiated by this Court in the event of any ensuing circumstances.

12. In the statement recorded under Section 161(3) Cr.P.C., Mohammed Basheer stated that on 24.8.2016, the petitioner called him over phone and asked money from him. Then the petitioner stated that he will send some responsible person for collecting the money through the car bearing registration No.TN-06 L 9898. Accordingly, Anand, Sigas, Mohammed and Muneer, (later came to know their name) came to his house. Without stating anything to them and after sending them for refreshment, he kept Rs.3.90 Crores in the car by covering floor mat and sent to the petitioner.

13. Though the petitioner has not produced any proof to show that the seized money to the tune of Rs.76,81,500/- belongs to him, from the status report of the respondent, it appears that one Mohammed Basheer of Pudupettai, Chennai had secretly sent a sum of Rs.3,90,00,000/- in the car Nissan Terreno to the petitioner.

14. From the status report, it also appears that out of Rs.3.90 Crores, a sum of Rs.76,81,500/- was seized from the accused Nos.1 to 6 on various dates at various places. The amount of Rs.76,81,500/- seized by the respondent police was produced before the learned Judicial Magistrate No.VII, Coimbatore, who in turn invested the same in Indian Overseas Bank, District Court Branch, Coimbatore.

15. From the above narration, it appears that the money stated to be seized from the arrested accused was the money sent by Mohammed Basheer of Pudupettai, Chennai to the petitioner on his request through the car bearing registration No.TN-06 L 9898, which was driven by the complainant Anand.

16. It is not the case of the respondent that apart from the petitioner, anybody has claimed right over the seized money. Even Mohammed Basheer had not claimed any right over the money seized. On the other hand, he had stated that as per the request made by the petitioner, he sent the money through the car. Therefore, in the absence of any rebuttal proof showing that the money seized did not belong to the petitioner, the presumption is, the seized money prima facie belongs to the petitioner.

17. As far as disposal of the seized currency notes are concerned, Section 451 clearly provides:

- (i) for the proper custody pending conclusion of the inquiry or trial;
- (ii) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
- (iii) if the property is subject to speedy and natural decay, to dispose of the same.

From the above, it is clear that powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, viz.:

- (1) Owner of the article would not suffer because of its remaining unused or by its misappropriation;
- (2) Court or the police would not be required to keep the article in safe custody;
- (3) If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
- (4) The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

18. It may be useful to refer the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, reported in AIR 2003 SC 638, wherein the Hon'ble Supreme Court has clearly stated the procedure to be followed for disposal of the seized valuable articles and currency notes, vehicles, seized liquor and Narcotic drugs. In paragraphs 10 to 14, it has been held as under:

"10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. Should be exercised promptly and at the earliest.
Valuable Articles and Currency Notes

11. With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (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.

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451, Cr.P.C. 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, Cr.P.C. to impose any other appropriate condition.

14. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or its claimants, 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 over back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed."

19. In view of the decision in *Sunderbhai Ambalal Desai*, supra, the petitioner being a claimant to the money seized in the case on hand is entitled to get interim custody, subject to the fulfillment of the conditions stipulated in *Sunderbhai Ambalal Desai*, supra and also as per the provision of Section 451 Cr.P.C.

20. In the case on hand the currency notes involved are demonetized currency notes. As far as the issue qua demonetized currency notes are concerned since the occurrence took place on 25.8.2016 just before demonetizing Rs.1000/- and Rs.500/- currency notes with effect from 08.11.2016, if the Court ordered custody of the currency notes seized to the petitioner, it would not be possible for the petitioner to exchange the same as those currency notes have been demonetized and prayed for a direction to exchange the same in any nationalized bank. In support of his contention, the learned counsel cited the decision of the Hon'ble Division Bench of the Madurai Bench of Madras High Court in *Suo-motu W.P.(MD) No.21985 of 2016*, dated 30.11.2016 (The Registrar (Judicial), Madurai

Bench of Madras High Court, Madurai v. The Union of India, rep. by its Secretary, Ministry of Finance, Department of Economics Affairs, Room No.39-B, New Delhi-110 001 and others), wherein the Division Bench of Madurai Bench of Madras High Court held as under:

"4. In view of the above stand of the respondents 1 to 3, we dispose of this Public Interest Litigation in the following terms:

a) The demonetized currency notes of Rs.500/- and Rs.1000/- denominations, as per the notifications issued by the Government of India, on 08.11.2016, which are in the custody of various Courts in the State of Tamil Nadu as well as even in the Union Territory of Pondichery as on 08.11.2016, in the event of the said currency notes being returned to the parties concerned on the orders of the Courts, the same shall be exchanged in any of the Nationalised Banks and the value thereof can be secured by the parties concerned.

b) The Courts, while returning the said demonetized currency notes to the parties concerned, shall, in the order itself, mention the numbers of the currency notes, which will be returned to the parties and there shall also be a direction for the exchange of the said currency notes in any of the Nationalised Banks.

c) If these demonetized currency notes are confiscated in favour of the State Government, the State Government officials concerned may tender the same before the Nationalised Banks and exchange the same so as to realise the value thereof in favour of the State Government.

d) If any such demonetized currency notes have already been returned on temporary basis under Section 451 Cr.P.C. As on 08.11.2016, in the event the very same currency notes are returned to the Court with the details of the numbers, the said currency notes can also be exchanged in the Nationalised Banks, as indicated above, provided the Courts mention the numbers of the currency notes in the order itself, while ordering return of the same finally under Section 452 Cr.P.C.

e) It is further clarified that this order shall not be applicable to the demonetized currency notes, which are produced before the Courts on or after 09.11.2016. In respect of these currency notes, we hope that the Government will take appropriate action in due course of time.

f) The Registry is directed to forward copies of this order to all the Courts subordinate to this Court within two weeks so that the Subordinate Courts could scrupulously follow the above directions."

21. In the case on hand, seizure of currency notes was made on 22.09.2016 and 23.09.2016 respectively based on the confession statements given by the accused persons and the seized currency notes had been produced before the Judicial Magistrate No.VII, Coimbatore. As per the order of the Hon'ble Division Bench in Suo-motu W.P.(MD) No.21985 of 2016, dated 30.11.2016, the order passed therein shall be not applicable to the demonetized currency notes, which were produced before the Courts on or after 09.11.2016. In this case, nothing has been produced by the respondent to show that the demonetized currency notes involved in the case were produced on or after 09.11.2016. In the case on hand, it is not in dispute that seizure was effected prior to 8.11.2016 and, therefore, the petitioner, in my considered view, is entitled to get the benefit of the order of the Hon'ble Division Bench, supra.

22. Considering all the aspects of the matter, it is hereby ordered to grant interim custody of the currency seized in the case on hand to the tune of Rs.76,81,500/- to the petitioner, subject to the following conditions:

- (i) The petitioner shall execute a personal indemnity bond for the like sum with one surety, who is an income tax assessee;
- (ii) On such execution of personal indemnity bond, the learned Judicial Magistrate No.VII, Coimbatore is directed to grant interim custody of the currency notes to the tune of Rs.76,81,500/- by following the procedure of recording evidence as provided under Section 451 Cr.P.C.
- (iii) Necessary bond and security should be obtained from the petitioner so as to prevent the evidence being lost, altered or destroyed.
- (iv) The learned Judicial Magistrate No.VII, Coimbatore is directed to mention the numbers of the currency notes seized in its order, while returning of the same to the petitioner finally and take photographs of currency notes and get the signature from the petitioner.
- (v) The petitioner is directed to file an affidavit to the effect that he would be ready and willing to produce the cash of Rs.76,81,500/- as and when Court directs.
- (vi) The petitioner is permitted to exchange the demonetized currency notes involved in this case in any one of the Nationalised Banks in the light of the order of the Hon'ble Division Bench, referred supra.
- (vii) In case the petitioner intends to leave abroad pending conclusion of the proceedings, he has to obtain leave of the Court concerned.

23. The Criminal Revision Case is ordered accordingly. The

order of the learned Judicial Magistrate No.VII, Coimbatore in
Crl.M.P.No.9877 of 2016, dated 20.10.2016 is set aside.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

To

1 The Judicial Magistrate No.VII,
Coimbatore.

2 The Inspector of Police,
Madhukkarai Police Station,
Coimbatore

3 The Public Prosecutor,
High Court, Madras

+1cc to Mr.P.Muthukumaarasamy, Advocate SR.No.58928

order made in
Crl.R.C.No.66 of 2017

SJ(CO)
SMI/30.08.2018



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