

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.211 of 2018

S.Mohamed Jalaludeen ... Petitioner/Accused 1

Vs

State by Inspector of Police,
District Crime Branch,
Thiruvallur.

(Crime No.25 of 2014)

.. Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 28.08.2017 made in C.M.P.No.1018 of 2017 on the file of the Judicial Magistrate No.1, Ponneri, to set aside the same and consequently direct the respondent police to return/handover the recovered cash/property to the revision petitioner.

For Petitioner : Mr.P.Srinivasan

For Respondent : Mr.R.Suriyaprakash
Government Advocate (Crl.Side)

JUDGMENT

The Revision petitioner filed this Criminal Revision Petition against the order passed by the learned Judicial Magistrate No.I, Ponneri dismissing the petition filed under section 451 of Cr.P.C. for return of cash property of Rs.11,48,000/- in C.M.P.No.1018 of 2017 in Crime No.25 of 2014 dated 28.08.2017.

Brief case of the Revision Petitioner:

2.The Revision Petitioner herein had been arrayed as A1 in the Cr No.25/2014 for the alleged offence under Sections 294 (B), 294(D), 406, 420, 506 (i) of IPC. The parents of the Revision Petitioner had been arrayed as A3 (father) and A5 (mother) A2 is the younger brother of A3, A4 is the employee in the shop. A6 is one Kavitha, who was actually running the Chit scheme, at the shop premises of the revision petitioner.

3.As per the F.I.R., the defacto complainant had lodged a complaint stating that the Revision petitioner and other petitioners had collected "Deepavali Fund" promising to give Gold and other articles to the subscribers chits. The defacto complainant had joined three chits on 23.11.2013 but he did not get the articles, hence the FIR was lodged.

4.The Revision Petitioner A1 was running a textile business namely "Indian Textiles" at No 169-B, GNT Road, Gummdipoondi, since 1999 onwards. A6 Kavitha printed that the chit fund scheme card showing that the chit office is functioning at M/s Indian Textiles Shop, with the blessings of the A1 Revision Petitioner's parents namely A.Shahul Hameed (A3) and Ayesha Beevi (A5) had used the names of the revision petitioners and his parents, name and business address of the shop and she was regularly collecting the amount and ran away with the collected chit amount and the police are in search of her.

5.The respondent police had taken the revision petitioner A1 in their jeep to M/s.KRM.Kumaragam Chits (P) Ltd. chit fund office, verified the details of the subscription paid by A1 and asked the chit fund office to transfer the due chit amount to the A1 Revision Petitioner's bank account and the chit fund company had transferred Rs.10,35,944/- (Rupees Ten Lakhs Thirty Five Thousand Nine Hundred and Forty Four only) to the A1 Revision Petitioner SB account bearing No.498198923 with Indian Bank, Gummidipoondi Branch and the Police had asked the A1 petitioner to withdraw Rs.10,36,000/- and it was seized by the respondent police. Similarly the Police had threatened the landlord of the shop premises and got the refund of the rental advance of Rs.50,000/-. Thus the Police had collected Rs.11,48,000/- (Rupees Eleven Lakhs and Forty eight thousand only) from A1 Revision Petitioner and a further sum of Rs.6,900/- from the A3's debit card on 26.07.2014. Altogether a sum of Rs.11,54,900/- was collected and out of which A1 Revision petitioner money is Rs.10,98,000/-.

6.The entire sum of Rs,11,48,000/- was saved much prior to the stating of the Deepavali Chit fund scheme by A6 Kavitha and there is no nexus between the alleged crime and Rs.11,48,000/- recovered from A1 Revision Petitioner. Hence, the Revision Petitioner filed a petition under Section 451 of Cr P.C. in C.M.P.No.1018 of 2017 in Crime No.25 of 2014, prayed for return of cash.

7.The learned Government Advocate (Criminal Side) on the other hand submitted that the petitioner has been implicated as one of the accused as A-1 in this case for the alleged chit transactions and opposed the case of the Revision Petitioner.

8.I have heard Mr.P.Srinivasan, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and also perused the materials available on record including the order passed by the learned Magistrate.

9.The learned Judicial Magistrate dismissed the petition on the ground that whether the revision petitioner is entitled to return for the case property seized from him can be decided only after full-fledged trial and cannot be decided at this stage.

10.Further the learned judicial magistrate observed that the judgment of the Hon'ble Supreme Court reported in 2003(1) CTC 175 does not applies to the facts and circumstances of the case and rejected the contention made by the revision petitioner.

11.The learned Judicial Magistrate ought to have applied the directions enumerated in paras-11 to 14 regarding the custody of valuable articles and currency notes. This Court is constrained to state that the order of the learned Magistrate is clearly in contravention of the guidelines and principles laid down by the Hon'ble Apex Court in Sunderbhai Ambalal Desai -Vs- State of Gujarat With SLP(Crl.)No.2755 of 2002 C.M.Mudaliar -Vs- State of Gujarat case, reported in 2003 SCC (Cri) 1943 and thereafter clarified by the subsequent decision in respect of the very same case, namely, Sunderbhai Ambalal Desai reported in 2003 SCC (Cri) 1440.

12.This Court is constrained to incorporate the relevant guidelines and principles laid down by the Hon'ble Apex Court in the decision cited supra, namely, in Sunderbhai Ambalal Desai case reported in 2003 SCC (Cri) 1943. The Hon'ble Apex Court has held:

"The powers under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

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. this jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

In *Basavva Kom Dyamangouda Patil v. State of Mysore*, (1977) 4 SCC 358 : 1977 SCC (Cri) 598, relied on 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 Cr.P.C. at the earliest. 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 impose any other appropriate condition, as it thinks necessary, as provided under Section 451 of 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 of 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 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 circumstances 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.

15. However these powers are to be exercised by the Magistrate concerned. The Magistrate concerned would take immediate action for seeing that powers under Section 451 of Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly".

16. The Hon'ble Apex Court in the subsequent decision in respect of the very same case, namely, in *Sunderbhai Ambalal Desai* case reported in 2003 SCC (Cri) 1440 further clarified that:

"Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the Court and the seizure report may be sufficient".

17. Therefore, in the decision cited supra, the Hon'ble Apex Court has laid down certain guidelines in respect of return of properties, namely, valuable articles, currency notes and vehicles. It is emphasised by the Hon'ble Apex Court that the powers under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously.

18. Before parting with this matter, this Court is constrained to state that the learned Magistrate dismissed the petition on the ground that the petitioner is entitled to return for the case property seized from him, can be decided only after full-fledged trial and cannot be decided at this stage, ignoring the admitted fact of seizure of cash by the concerned respondent police from the Revision Petitioner. It is also seen that in number of matters, the guidelines stipulated by the Hon'ble Apex

Court in the decisions cited Supra, have not been taken note by the learned Magistrates concerned. In view of such state of affairs, the affected and aggrieved persons have been put into great hardship and irreparable loss in a case of theft of gold jewellery or valuable articles and cash and the victims, viz., the complainants, having already suffered mental torture and agony, have also put into great hardship and irreparable loss on the ground of delay and rejection of the petition filed under Section 451 of Cr.P.C. for return of their articles and cash in spite of the admitted fact that they are the owners of the properties.

19. The learned Judicial Magistrate failed to have applied her judicial mind and cannot simply dismiss the property return petition. If there is a case, there will be a counter case. But, there should be a judicial order deciding the disputed matter and rival claim if any.

Ultimately this Court has ordered as follows:-

- (i) This revision is allowed.
- (ii) The impugned order passed in C.M.P.No.1018 of 2017 in Crime No.25 of 2014 dated 28.08.2017 is set aside.
- (iii) The learned Magistrate will return the cash Rs.11,48,000/- to the revision petitioner, after recording the currency note numbers in the Property Register, if not already recorded.
- (iv) The revision petitioner will execute a personal bond for Rs.11,48,000/- to the satisfaction of the said Magistrate.
- (v) It is made clear that no property document, Solvency Certificate or surety shall be insisted upon.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vs

To

1. The Judicial Magistrate No.1, Ponneri.

2. Do Through The Chief Judicial Magistrate
Thiruvallur.

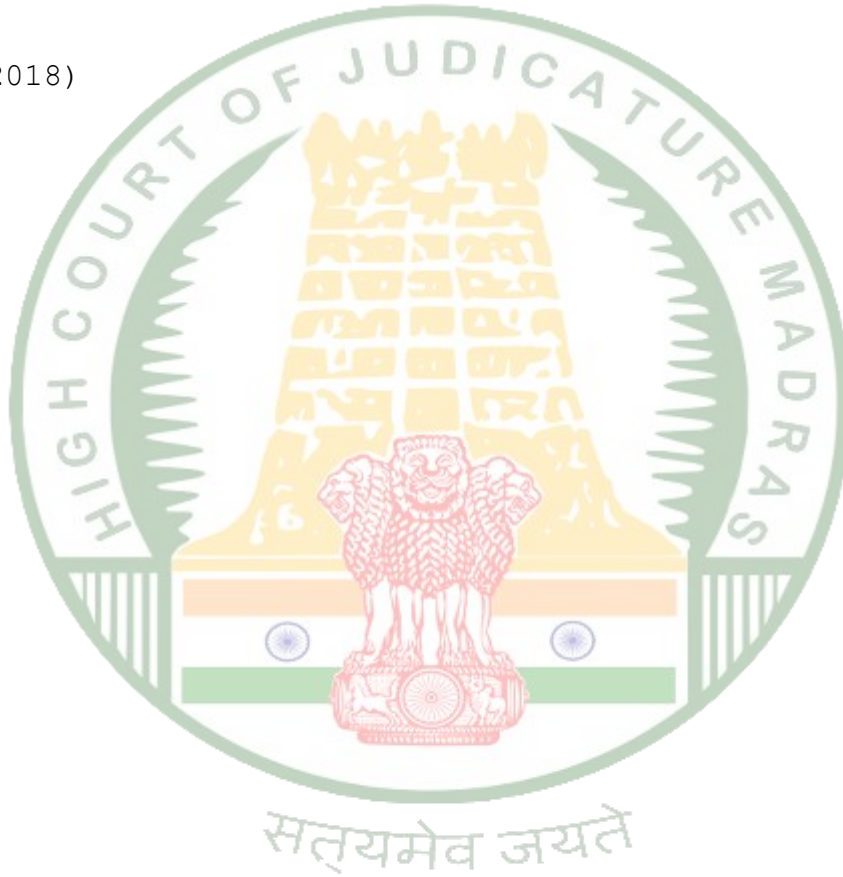
3. The Inspector of Police
District Crime Branch
Thiruvallur.

4. The Public Prosecutor
High Court, Madras 104.

+1 CC to Mr.P.Srinivasan,Advocate sr 80667.

Cr1.R.C.No.211 of 2018

RSI (CO)
SP(18/12/2018)



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