

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 10.01.2018
CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
Crl.R.C.Nos.910, 911 & 912 of 2017

Periyasamy
S/o.Muthusamy .. Petitioner in Crl.R.C.No.910 of 2017

Sankar
S/o.Soodamani .. Petitioner in Crl.R.C.No.911 of 2017

Murugesan
S/o.Krishnasamy .. Petitioner in CrlR.C .No.912 of 2017

Vs

State rep. By
Inspector of Police,
Karimangalam Police Station,
Dharmapuri District,
(Cr.No.639 of 2016) .. Respondent in all Revisions

Criminal Revision Cases filed under Sections 397 and 401
Cr.P.C. against the order of learned Judicial Magistrate,
Palacode, passed in C.M.P.Nos.467, 468 and 466 of 2017 in Crime
No.639 of 2016 on 21.02.2017, respectively.

For Petitioners
[in all Crl.R.C's] : Mr.A.Edwin Prabakar

For Respondent
[in all Crl.R.C's] : Mr. V.Arul,
Additional Public Prosecutor.

C O M M O N O R D E R

These Criminal Revision Cases arise against the order of
learned Judicial Magistrate, Palacode, passed in C.M.P.Nos..467,
468 and 466 of 2017 in Crime No.639 of 2016 on 21.02.2017,
respectively.

2. On the complaint of petitioner in Crl.RC.No.911 of 2017,
case in Crime.No.639 of 2016 was registered by respondent for
offences u/s.420 and 506(i) IPC. Though, case stands registered
for such offences, complainant informed that accused demanded
payment of money in new currency notes promising to pay an
additional 20% in old demonetization currency, beat complainant
party and did away with a sum of Rs.35,00,000/-. Upon arrest of
accused, recovery of Rs.26,50,000/- was effected. Petitioners,
even according to the complaint, are persons, who have lost
money, have sought return there of in C.M.P.Nos.467, 468 and 466

of 2017 in Crime No.639 of 2016. Such petition came to be dismissed under orders dated 21.02.2017. Against dismissal thereof, petitioners are before this Court.

3. Heard learned counsel for petitioners and learned Additional Public Prosecutor.

4. Even as per the complaint, it is petitioners, who have lost money in a sum of Rs.35,00,000/- [Rupees thirty five lakhs only] owing to the wrong doings attributed to accused. There are no rival complaints in the complaint.

5. The Hon'ble Apex Court in *Sunderbhai Ambalal Desai v. State of Gurajar* AIR 2003 Supreme Court 638, observed and held as follows:

"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 prepared 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 Sections 451, Cr.P.C to impose any other appropriate condition."

6. Following the said decision, the Hon'ble Karnataka High Court in *Venkataraman v. State of Karnataka & another* 2006

CRI.L.J. 1571 directed that :

"4. The seized currency notes shall be handed over to the respondent No.2-Smt. Shashi Prabha personally by the Presiding Officer of trial Court after,

(a) getting detailed proper panchanama prepared of such notes.

The detailed panchanama of the currency notes in question should be drawn by the Registrar of the City Civil and Sessions Court, Bangalore in the presence of two panchas and in the actual and physical presence of the Presiding Officer of the trial Court.

(b) taking photographs of such currency notes at the expense of State.

The photographs of such notes shall be taken in the presence of Registrar of City Civil and Sessions Court, Bangalore and the same shall be preserved by the trial Court to be marked during trial. The trial Court should see that photographs of currency notes are attested or counter signed by the accused and respondent No.2 herein (complainant), the Registrar of City Civil and Sessions Court and two panchas.

(c) after taking self bond to the extent of about Rs.2 lakhs from complainant which one surety for the like sum".

7. Considering the facts on hand, this Court is of the view that it would be appropriate to pass orders on similar lines as that of the Hon'ble Karnataka High Court with some modification. Accordingly, this Court directs the Court below viz., Judicial Magistrate, Palacode, to effect the return of sum of Rs.12,35,000/-, Rs.7,40,000/- and Rs.85,000/- to petitioners respectively after:

(a) getting detailed proper panchanama prepared of such notes:

The detailed panchanama of the currency notes in question should be drawn by such Court Officer as designated by learned Judicial Magistrate, Palacode, in the presence of two panchayatdars and in the actual and physical presence of the Presiding Officer of the Court below. The same may be marked in the course of trial.

(b) causing a videograph of such currency notes at the expense of the petitioners:

The videograph shall be taken in the presence of such Court Officer as designated by learned Judicial Magistrate, Palacode and two panchayatdars and the same shall be preserved by the Court below to be marked during trial. A certificate is to be recorded by the court officer as also the two panchayatdars and the person recording the videograph informing the place, time of recording the same. Such certificate shall also be marked along with the videograph in the course of trial.

(c) after furnishing bank guarantee for a sum of Rs.12,35,000/-,

Rs.7,40,000/- and Rs.85,000/- respectively.

These Criminal Revisions is disposed of with the above direction.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Palacode.
 - 2.do-Through The Chief Judicial Magistrate
Dharmapuri
 - 3.The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
 - 4.The Public Prosecutor,
High Court, Chennai.
- +3 ccs to Mr.A.Edwin Prabakar Advocate sr 1969 to 1971

सत्यमेव जयते

CrI.R.C.Nos.910, 911 & 912 of 2017

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