

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 26.10.2018
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1211 of 2018

1.Selvaprakash
2.Babusankar
3.Kalaimani
4.M.Manivasagam ... Petitioners

Vs.

The State represented by
Inspector of Police,
CCB, Salem City,
Cr. No.2 of 2018. ... Respondent

Prayer:

Criminal Revision Case filed under Sections 397 r/w 401 of the Criminal Procedure Code seeking to set aside the order in C.M.P.No.752 of 2018 dated 03.03.2018 passed by the Judicial Magistrate No.5, Salem.

For Petitioners : Mr.T.Gowthaman
For Respondent : Ms.S.Thankira
Government Advocate (Crl. Side)

O R D E R

This criminal revision has been filed seeking to set aside the order dated 03.03.2018 made in C.M.P.No.752 of 2018 by the learned Judicial Magistrate No.5, Salem. The petitioners are the defacto complainants in Crime No.2 of 2018.

2.The learned counsel appearing for the petitioners would submit that 5 complaints have been received from 5 persons. As against the complaint with respect to the properties, a portion of the properties has been recovered. However, one more accused is still absconding and some more properties have to be recovered from him. He would further submit that the petitioners, along with the petition in C.M.P.No.752 of 2018, has filed necessary documents viz., Income Tax and Invoice of purchase of Silver ingots, which are alleged to have been stolen from the petitioners. However, by the order impugned herein, the said petition was dismissed.

3.The learned counsel appearing for the petitioners also drew the attention of this Court to paragraph No.18 of the impugned order, wherein, it has been observed as follows:

"In this case, if the property is not identifiable, it cannot be given to the persons claiming. Further, only the property claiming by the petitioner Arunkumar in C.M.P.No.715 of 2018 only has got necessary documents for the ownership. But, the other defacto complainants in C.M.P.No.752 of 2018 have filed the petition on the strength of confession statement given by the accused persons.

Further, filing of the compliant is not by itself give raise to the preumption of ownership of the property. Further, they have not filed even single document to show that they have got silver and source of silver and licenced to vend. Further, none of the claimants filed any single document." The above observation, according to the learned counsel, is a procedural irregularity. Hence, he sought to allow this revision by setting aside the order impugned herein.

4.The learned counsel appearing for the petitioners would submit that this Court in similar circumstances, vide order dated 10.09.2018 made in Crl.R.C.No.1079 of 2018 has granted liberty to the petitioner therein to file necessary documents and to mark the same. He would further state that since the petitioners are also similarly situated persons, the same liberty may be granted to the petitioners also.

5.The learned Government Advocate (Crl.side) would submit that the petitioners seek return of the property in question, for which, they have to produce the necessary documents to prove their ownership, before the Court, where the property is kept under safe custody.

6.Heard both sides.

7.The very same issue was already dealt with by this Court in Crl.R.C.No.489 of 2018 and vide order dated 11.06.2018, this Court allowed the petition filed by the other complainant in C.M.P.No.715 of 2018 in Crime No.2 of 2018. In view of the above, I am inclined to allow this revision petition.

8.Therefore, this revision petition is allowed and the impugned order dated 03.03.2018 passed in C.M.P.No.752 of 2018 in Crime No.2 of 2018, is set aside. The matter is remitted back to the learned Judicial Magistrate No.5, Salem, who shall look into the matter afresh. It is open to the petitioners herein to file necessary documents and to mark the same. Based upon the documents produced, the learned Magistrate shall consider the same and pass appropriate orders on merits and in accordance with law.

26.10.2018

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

Note: Issue order copy on 29.10.2018

To

The Inspector of Police,
CCB, Salem City,
Cr. No.2 of 2018.

M.DHANDAPANI,J.
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