



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASHCrl.R.C.(MD)No.703 of 2017

Jeyakumar :Petitioner/Petitioner/*Defacto*-Complainant
-Vs.-

1.The Inspector of Police,
Cumbum South Police Station,
Cumbum,
Theni District. :1st Respondent/1st Respondent/Complainant
(Crime No.342 of 2017)
2.Kannan :2nd Respondent/2nd Respondent/Accused

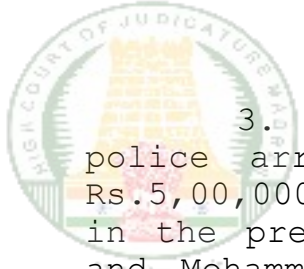
Prayer: Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 11.08.2017 made in Cr.M.P.No.5276 of 2017 on the file of the learned Judicial Magistrate, Uthamapalayam in connection with the Criminal Case in Crime No.342 of 2017 on the file of the 1st Respondent Police and allow the above Revision Case.

For Petitioner : Mr.J.Lawrance
For Respondent No.1 : Mrs.S.Bharathi,
Government Advocate (Crl. Side)
For Respondent No.2 : Mr.M.Laxmi Mahendraa

O R D E R

On the complaint lodged by the petitioner, the first respondent police registered a case in Crime No.342 of 2017 on 12.01.2017 under Sections 420 and 379 IPC against Kannan.

2. It is the case of the petitioner that Kannan was a friend; that they along with other friends consumed liquor on 24.06.2017; that after consuming liquor, Kannan and the petitioner came to the petitioner's house and spent the night; that when the petitioner got up early in the morning, he did not find Kannan and that the petitioner noticed that a sum of Rs.5,26,000/- (Rupees Five Lakhs and Twenty Six Thousand only) that was kept by him for his business purpose in the Godrej Bureau of his house, was missing. Hence, the complaint and the First Information Report.



3. After registration of the First Information Report, the police arrested Kannan on 21.07.2017 and effected recovery of Rs.5,00,000/- (Rupees Five Lakhs only) from the residence of Kannan in the presence of two independent witnesses, namely Abdul Raheem and Mohammed Sardar. During the pendency of investigation, the petitioner filed a petition in Cr.M.P.No.5276 of 2017 under Section 451 Cr.P.C., before the learned Judicial Magistrate, Uthamapalayam for interim custody of the seized amount of Rs.5,00,000/-. Kannan filed his objection in Cr.M.P.No.5276 of 2017 stating that the sum of Rs.5,00,000/- was not seized by the police as alleged by them; that the police had taken him in illegal custody; that while he was in custody, his wife pledged her jewels with the Muthalagu Finance Private Limited and obtained a loan of Rs.2,00,000/- (Rupees Two Lakhs only) on 21.07.2017 and the balance amount of Rs.3,00,000/- (Rupees Three Lakhs only) was raised from her father and the same were handed over to the police and that the police have made it look as if they had seized Rs.5,00,000/- (Rupees Five Lakhs only) from the house of Kannan. Therefore, Kannan objected to the grant of interim custody of the money to the petitioner. The trial Court has dismissed Cr.M.P.5276 of 2017 on 11.08.2017, challenging which, this Criminal Revision Case has been filed.

4. Heard Mr.J.Lawrance, learned counsel appearing for the petitioner, Mrs.S.Bharathi, learned Government Advocate (Criminal Side) appearing for the first respondent and Mr.M.Laxmi Mahendraa, learned counsel for the second respondent.

5. Today, Mr.P.Ramakrishnan, Inspector of Police, Cumbam South Police Station, Cumbum, is present in Court.

6. On instructions, the learned Government Advocate (Criminal Side) appearing for the first respondent submitted that the investigation in Crime No.342 of 2017 has been completed, but, however, there is no indication to show whether the charge sheet has been filed.

7. Mr.J.Lawrance, learned counsel appearing for the petitioner placed strong reliance upon the confession statement of Kannan in support of his contention that the recovery of the money was pursuant to a disclosure made by Kannan, which is relevant under Section 27 of the Indian Evidence Act.

8. Per contra, the learned counsel appearing for second respondent placed strong reliance upon the seizure memo to show that the denomination of the seized notes tally with the denomination mentioned in the personal jewel loan receipt given by the Muthalagu Finance Private Limited, inasmuch as in both the documents, the denomination was shown as 'Rs.100 x 465', which is equal to 'Rs.46,500/-' (Rupees Forty Six Thousand Five Hundred only).

9. At the outset, this Court poses a question to both the counsel as to how they managed to get a copy of the police



confession and the seizure mahazar from the Court of the Judicial Magistrate in violation of the law laid down by the Full Bench of this Court in *Selvanathan @ Raghavan vs. State* reported in 1988 L.W. (Cr1) 503. In the said judgment, the Full Bench of this Court has clearly stated that such documents cannot be furnished to the accused pending investigation till charge sheet is filed.

10. This Court perused the photocopy of the police confession and the photocopy of the seizure mahazar, which show that copy applications have been made by the parties before the learned Judicial Magistrate, Uthamapalayam and the same have been furnished to them.

11. The Registrar (Judicial) is directed to issue show cause notice to the learned Judicial Magistrate, Uthamapalayam, calling upon him to explain as to why action should not be taken against him for furnishing certified copies of these two documents, in violation of the law laid down by the Full Bench of this Court in *Selvanathan @ Raghavan vs. State* reported in 1988 L.W. (Cr1) 503, and the circular issued by the Registrar General of this Court. The learned Judicial Magistrate, Uthamapalayam shall send his explanation, within one week from the date of receipt of show cause notice and the same shall be placed before me on the administrative side.

12. While sending the communication, the Registrar (Judicial) shall enclose the photocopies of the confession statement and the seizure memo for the ready reference of the Magistrate.

13. Be that as it may, going to the issue in this case, the order passed by the learned Judicial Magistrate, Uthamapalayam under Section 451 Cr.P.C. is only an Interlocutory Order and it is not a final order and, therefore, the same is not revisable, in view of the Bar under Section 397 (2) Cr.P.C.. However, the learned Judicial Magistrate, Uthamapalayam, is directed to note down the currency numbers and prepare an Inventory of the currency numbers and denomination and deposit the seized sum of Rs.5,00,000/- in a Nationalised Bank, so that, the amount will accrue interest.

14. Liberty is given to the petitioner to file a fresh application for return of property after the charge sheet is filed and cognizance is taken. The police is directed to complete the investigation in Crime No.342 of 2017, if not completed and file a charge sheet, within a period of three months from the date of receipt of a copy of this order.

15. With the above directions, this Criminal Revision Case is disposed of.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar



To

- 1.The learned Judicial Magistrate, Uthamapalayam.
- 2.The Inspector of Police,
Cumbum South Police Station,
Cumbum,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:-

**1.The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.**

**2.The Section Officer, 'B' Section,
Madurai Bench of Madras High Court, Madurai**

+One cc to Mr.J.Lawrance, Advocate, SR.No.44694

+One cc to M/s.Laxmi Mahendras , Advocate, SR.No.44510

sm

RL/8C/4P/JC/SAR1/8/2/2018

Order made in
Cr1.R.C.(MD)No.703 of 2017

29.01.2018