



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02.08.2018

CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

CRL.A. (MD) No.354 of 2018

WEB COPY

Lakshmanan

... Appellant/Petitioner/Victim

Vs.

The Inspector of Police,
Central Crime Police Station,
Nagercoil,
Kanyakumari District.
(Crime No.284 of 2003)

...Respondent/Respondent/
Complainant

Prayer : This Criminal Appeal is filed under Section 454 of the Code of Criminal Procedure, to set aside the order dismissing the return of property petition filed in Cr.M.P.No.1837 of 2015 in S.C.No.73 of 2007 dated 30.11.2015 passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil and custody of the articles mentioned in the petition in Cr.M.P.No.1837 of 2015 in S.C.No.73 of 2007.

For Appellant

: Mr.T.Ramesh Raja

For Respondent

: Mr.K.Suyambulinga Bharathi,

Government Advocate (Crl. Side)

JUDGMENT

Heard Mr.T.Ramesh Raja, learned counsel for the appellant and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the respondent.

2.This appeal has been filed to set aside the order dismissing the return of property petition filed in Cr.M.P.No.1837 of 2015 in S.C.No.73 of 2007 dated 30.11.2015 passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil.

3.On the side of the petitioner, it is stated that the petitioner is the defacto complainant in crime No.284 of 2003 and the case was taken up on file by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil in S.C.No.73 of 2007 against six persons. Since one of the accused was absconding, the case was split up in the year 2009 against one of the accused by name Sundar Raj in S.C.No.157 of 2009 and after trial, other accused were convicted. Aggrieved by the same, the accused persons preferred an appeal in Criminal Appeal No.754 of 2008 before this Court. It is the case of the prosecution that the accused had stolen away gold jewels and Rs.65,000/- and some other properties from the house of the petitioner. The petitioner filed a petition for return of the properties and the same was dismissed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil.



4. On the side of the respondent, it is stated that the case against one more accused is pending and these articles are necessary for marking as material objects in the pending case.

5. Records perused. The case is pending from the year 2003 and some of the accused were already convicted. Identification of this property cannot be disputed. Till the other absconding accused is traced out, the petitioner cannot be deprived of his property. Already 15 years had passed by. Hence, in the interest of justice this Court deems it necessary to return the property to the petitioner on identification, on acknowledgment and on the following conditions:-

(i) The petitioner has to execute a bond with two sureties for a like sum to the satisfaction for a sum of Rs.10,00,000/- (Rupees Ten Lakhs only), of the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil;

(ii) The petitioner has to undertake not to alter or alienate or encumber the jewels;

(iii) The petitioner has to produce the property as and when required before the concerned Court.

(iv) The petitioner is directed to take photograph of the properties and to hand over four set of photographs before the lower Court immediately for identification of the jewels in the pending case. The concerned Court is directed to place two set of photographs in each of the Sessions Case in S.C.Nos.73 of 2007 and 157 of 2009 along with records, proper identification and acknowledgement.

6. With the above observation, the order passed by the learned Assistant Sessions Judge Cum Chief Judicial Magistrate, Nagercoil in Cr.M.P.No.1837 of 2015 is set aside and this Criminal Appeal is allowed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Assistant Sessions Judge Cum
Chief Judicial Magistrate, Nagercoil



2. The Inspector of Police,
Central Crime Police Station,
Nagercoil, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC to Mr.T.Ramesh Raja, Advocate, SR.No.77348

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ES/RP/SAR 3/27.08.2018/3P/7C