

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.04.2019

CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.9584 of 2019

G.Balabharathy

... Petitioner

Vs.

The Inspector of Police
Manavala Nagar Police Station
Thiruvalluvar District

... Respondent

COMMON PRAYER: Criminal Original petitions have been filed under Sections 482 of the Code of Criminal Procedure, to modify the condition 5(d) The petitioner shall produce an affidavit of undertaking that he shall not change or spend the property pending disposal of this case passed by the learned Judicial Magistrate No.II, Thiruvallur, Thiruvallur District dated 24.01.2019 in Crl.M.P.No.2980 of 2018.

For Petitioner : M/s.R.Arun

For Respondent : Mr.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed seeking to modify one of the conditions imposed by the Court below while allowing the petition filed by the petitioner under Section 451 and 457 of Cr.P.C., seeking for return of property. The petitioner is the Manager of the company and he had lodged a complaint regarding certain missing electrical goods from the godown. On investigation, it was found that certain employees belonging to the company had stolen the goods and therefore, an FIR came to be registered in Crime No.375 of 2018. The accused persons were arrested and the stolen articles were also seized and produced before the Court.

2. The petitioner filed a petition before the Court below seeking for return of articles. The Court below while allowing the petition imposed certain conditions and the petitioner is aggrieved by the following condition:

"5.d The petitioner shall produce an affidavit of undertaking that he shall not change or spent the property pending disposal of this case".

3. The learned counsel for the petitioner submitted that the property involves television sets and home-theater speaker which has to be sold in the regular course of business and the Court below went wrong in insisting that the petitioner will not exchange or sell the properties pending disposal of this case. The learned counsel submitted that the Court below could have taken inventory of the properties and also taken photographs of the property and thereafter, permitted to deal with the properties.

4. The learned counsel in order to substantiate his arguments produced an earlier order passed by this Court in CrI.O.P.No.11908 of 2018 dated 23.04.2018 under similar circumstances. The relevant portion of the order is extracted herein.

"5. The facts remains that there was a theft in the shop of the petitioner, pursuant to which, the Police registered an FIR as stated above. The lost goods were recovered by the Police and the learned Judicial Magistrate No.I, Ponneri has returned the same to the petitioner under Section 451 Cr.P.C. To say that the petitioner shall keep the goods indefinitely till the trial is over would amount to travesty of the justice. It is true that corpus delicti is essential in a theft case. However, it is common knowledge that trials in such cases will not get over in the near future. If the victim is directed to preserve the articles for an indefinite period, he would suffer undue prejudice. Therefore, this Court deletes the said condition imposed by Judicial Magistrate No.I, Ponneri that he shall not alienate or change the nature of the property.

6.The petitioner is directed to produce the mobile phones before the Judicial Magistrate No.I, Ponneri within a period of four weeks from the date of receipt of a copy of this order. On such production, the Inspector of Police/Investigating Officer and the Judicial Magistrate No.I, Ponneri shall prepare an inventory and certify the same. If the photographs are already available, the said photographs shall also be certified by the Judicial Magistrate and the Investigating Officer. Thereafter, the mobile phones should be handed over to the petitioner who will be entitled to deal with the same. The inventory and the photographs so certified shall be treated as evidence before the trial court".

5. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.

6. Taking into consideration, the facts and circumstances of the case and also the earlier order passed by this Court, the petitioner is directed to produce the properties before the learned Judicial Magistrate No.II, Thiruvallur within a period of two weeks from the date of receipt of copy of this order. On such production, the Investigating Officer/Inspector of Police, Manavala Nagar Police Station and the Judicial Magistrate No.II, Thiruvallur shall prepare an inventory and certify the same. The photographs of the property shall be taken and they shall also be certified by the Judicial Magistrate and the Investigating Officer. Thereafter, the property shall be returned to the petitioner who will be entitled to deal with the property. The inventory and the photographs which are certified shall be treated as evidence before the trial Court.

7. This Criminal Original Petition is disposed of, with the above modification.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.II,
Thiruvallur,
Thiruvallur District.

2.The Inspector of Police
Manavala Nagar Police Station
Thiruvalluvar District

3.The Public Prosecutor,
Madras High Court.

+1cc to Mr.S.Suresh, Advocate, S.R.No.34496

Cr1.O.P.No.9584 of 2019

AD(CO)

RRS (07/05/2019)