

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.660 of 2019

Prashant Bansal

..

Petitioner/de facto
complainant

Vs.

The Station House Officer,
C.I.D. Police Station,
Puducherry.

..

Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 10.04.2019 passed in Crl.M.P.No.291
of 2019 in Crime No.9 of 2018 on the file of the Chief Judicial
Magistrate Court, Puducherry.

For Petitioner : Mr.N.Murali Kumaran
for M/s.Mcgan Law Firm

For Respondent : Mr.Balamurugan
Public Prosecutor (Puducherry)

O R D E R

This revision petition has been filed seeking to set aside
the order dated 10.04.2019 passed in Crl.M.P.No.291 of 2019 in
Crime No.9 of 2018 on the file of the Chief Judicial Magistrate
Court, Puducherry.

2. The long and short of the case is as under:

2.1 On the complaint lodged by Prashant Bansal, Proprietor
of Pasupathi Engineering, the CB-CID Puducherry/respondent
herein, registered a case in Crime No.9 of 2018 on 26.07.2018
under Sections 419, 420, 466, 468 and 471 r/w 34 IPC, against
Shyam Mitra @ Bholanath Biswas and others.

2.2 In the complaint, Prashant Bansal has stated that
Shyam Mitra represented himself as Bholanath Biswas, Assistant
General Manager, Marketing, Steel Authority of India Limited
and came forward to supply huge quantities of steel, for which,
Prashant Bansal transferred around a sum of Rs.58,32,000/- by

RTGS to the account of Shyam Mitra and later came to know that he has been cheated.

2.3 After registration of FIR, the CB-CID arrested Shyam Mitra who projected himself as Bholanath Biswas, AGM Marketing, SAIL and conducted searches and seized the following items:

- Two cars (MAH Scorpio and Mahindra XUV500)
- Two gold chains weighing about 48.890 gms (24.445 gms each)
- One gold coin weighing about 2 gms
- Two gold coins weighing about 0.500 gms
- Silver rings with Gems - 4 Nos.
- Indian Currency Notes amount Rs.1,11,920/-

The seized items were produced before the Chief Judicial Magistrate, Puducherry.

2.4 During investigation, the accused entered into a memorandum of understanding dated 02.01.2019, foregoing and relinquishing all claims to the properties seized by the police. Therefore, Prashant Bansal filed Crl.M.P.No.291 of 2019 in Crime No.9 of 2018 under Section 451 Cr.P.C. before the Chief Judicial Magistrate, Puducherry, for interim custody of the seized properties.

2.5 The Chief Judicial Magistrate, Puducherry, has dismissed Crl.M.P.No.291 of 2019, aggrieved by which, Prashant Bansal has filed the present revision petition under Section 397 r/w 401 Cr.P.C.

3. Heard Mr.N.Murali Kumaran, learned counsel for the petitioner and Mr.Balamurugan, learned Public Prosecutor (Puducherry) for the respondent/State.

4. On the directions of this Court, Mr.G.Saravanan, Investigating Officer, has filed an affidavit dated 14.08.2019, wherein, he has stated as follows:

"4. I respectfully submit that on 29.07.2018, the voluntary confession was recorded in the presence of two witnesses at Kolkatta. In his confession statement, he stated that he purchased two luxurious cars, gold and silver ornaments and spent the money lavishly. Further, he transferred the money to his wife account. In pursuance of the confession statement, two luxurious cars were seized. The Bank accounts of the accused and his wife were identified. On 30.07.2018, the accused identified his rented house and

handed over the gold ornaments, laptop, documents and cash Rs.1,11,920/- and the same were seized. On 31.07.2018, the accused along with seized properties except the said two cars were brought to CBCID PS, Puducherry.

7. I sincerely state that after arresting the accused, the above said two cars (MAH Scorpio and Mahindra XUV500), Two gold chains weighing about 48.890 gms (24.445 gms each), One gold coin weighing about 2 gms, Two gold coins weighing about 0.500 gms, Silver rings with Gems - 4 Nos., Indian Currency Notes amount Rs.1,11,920/- all the properties worth about Rs.42 lakhs were seized. I submit that the above two cars were seized at Kolkata on 29.07.2018 and produced before the Hon'ble Chief Judicial Magistrate, Puducherry and at present the Vehicles are kept under the custody of the CBCID PS, Puducherry.

8. I sincerely state that the accused Shyam Maitra posed himself as Asst. General Manager of Steel Authority of India Ltd., Govt. of India in Indiamart, Marketing website for supply of pig iron raw materials. Based on the post, many pig iron suppliers approached the complainant's company including the accused Shyam Maitra @ Bolanath Biswas. He introduced himself as the Assistant General Manager of Steel Authority of India Ltd., Govt. of India, Kolkata and offered to supply 200 MT of pig iron raw materials for a lower price than the market value by using the letter pad/letter head of SAIL (Steel Authority of India), a Govt., of India Institution. The complainant paid a total sum of Rs.58,32,000/- through RTGS to the accused bank account. But, the accused Shyam Maitra did not send the iron materials as promised and hence cheated him. He is a habitual offender with above modus operandi and cheated many customers all over India. The accused was already arrested by the Gurgaon Police, Haryana State and Hyderabad Police, Telengana State for the similar offences and the cases are under investigation. The accused Shyam Maitra was released on bail by the Court. In Gurgaon case, the accused Shyam Maitra had cheated an amount of Rs.2.40 crores. In Hyderabad case,

the accused Shyam Maitra had cheated an amount of Rs.14 lakhs. The accused Shyam Maitra had cheated many industrialists all over India. The accused Shyam Maitra belongs to the State of West Bengal and is indulging in the same type of illegal online cheating fraud and small scale industry owners were severely affected.

10. I sincerely state that since the vehicle is unregistered, the following procedure may be adopted: The vehicles may be returned to the Mahindra Company, Puduchery on the order of the Hon'ble Chief Judicial Magistrate Court, Puducherry and order the Management of the company to remit cash in the Court as equal to the value of the vehicles."

5. The learned counsel for the petitioner submitted that there are prima facie materials to show that the seized properties were purchased with the money received from the petitioner and therefore, interests of justice will be sub-served if the properties are returned to the petitioner.

6. Per contra, the learned Public Prosecutor (Puducherry) submitted that the two vehicles are still unregistered and they are lying in the police station open to sun and rain.

7. In the impugned order dated 10.04.2019, the Trial Court has observed as follows in paragraph No.9:

"9. The contention of the learned counsel for the petitioner is that on 02.01.2019 the petitioner and the accused entered into the Memorandum of Understanding stating that the accused surrenders, forgoes, relinquishes, conveys transfers and settles their rights and interest whatsoever over the seized item. But the accused denied the same and stated that with the influence of police, he was forced to sign in the said memorandum of understanding under threat. So, the said contention of the petitioner cannot be accepted. In the above circumstances, the petition is premature stage and it cannot be allowed at this stage. This point is answered accordingly."

8. This Court gave its anxious consideration to the submissions made across the bar.

9. In *Sunderbhai Ambalal Desai vs. State of Gujarat*¹, the Supreme Court has held that the seized vehicles should not be kept in the police station or in the Court campus for indefinite period, as that would diminish its value and would become a piece of scrap.

10. The accused has not come forward to claim them. To balance the competing claims, this Court is of the view that the suggestion made by the Investigating Officer in paragraph No.10 of his affidavit extracted supra, deserves consideration.

11. In the result, the order dated 10.04.2019 passed in Crl.M.P.No.291 of 2019 in Crime No.9 of 2018 on the file of the Chief Judicial Magistrate Court, Puducherry, is set aside and this revision petition is allowed with the following directions:

(i) The Chief Judicial Magistrate, Puducherry, shall pass appropriate orders directing the IDBI Bank to deposit the sum of Rs.1,74,777/- lying in Account No.1886102000007474 in a Fixed Deposit account with them in the name of the Chief Judicial Magistrate, Puducherry, for a period of three years and submit the Fixed Deposit Receipt to the Court. The Fixed Deposit Receipt can be extended from time to time.

(ii) The Chief Judicial Magistrate, Puducherry, shall further direct the IDBI Bank to close the FDR of Rs.3,00,000/- in Account No.1886106000004002 and deposit the amount with accrued interest, if any, in a Fixed Deposit account with them in the name of the Chief Judicial Magistrate, Puducherry, for a period of three years and submit the Fixed Deposit Receipt to the Court. The Fixed Deposit Receipt can be extended from time to time.

(iii) The Chief Judicial Magistrate, Puducherry, shall direct the State Bank of India to deposit the sum of Rs.2,50,000/- + Rs.35,000/- = Rs.2,85,000/- lying in the SBI Account No.20041967516 in the name of the wife of the accused, in a Fixed Deposit account with them in the name of the Chief Judicial Magistrate, Puducherry, for a period of three years and submit the Fixed Deposit Receipt to the Court. The Fixed Deposit Receipt can be extended from time to time.

(iv) The cash of Rs.1,11,920/- shall also be deposited in a Fixed Deposit account with them in the name of the Chief Judicial Magistrate, Puducherry, for a period of three years, in any nationalized bank near the Court and the Fixed Deposit Receipt submitted to the Court. The Fixed Deposit Receipt can be extended from time to time.

(v) The Chief Judicial Magistrate, Puducherry, shall give an option to the accused to deposit the value of the Mahindra Scorpio - SUV and Mahindra XUV 500 - SUV in the Court and take custody of the same within four weeks, failing which, the Chief Judicial Magistrate, Puducherry, shall hand over the two vehicles to the Mahindra Company, Puducherry and after giving due depreciation, the value of the two vehicles be determined and Mahindra Company may be directed to deposit the same in the Court of the Chief Judicial Magistrate, Puducherry and deal with the vehicles as their own. On such deposit, the said sum shall be deposited in any nationalized bank in a Fixed Deposit account in the name of the Chief Judicial Magistrate, Puducherry, for a period of three years and the Fixed Deposit Receipt submitted to the Court. The photographs of the vehicles can be obtained and kept on file.

(vi) All these items can be disposed of by the Chief Judicial Magistrate, Puducherry, in accordance with law under Section 452 Cr.P.C. at the time of the final disposal of the case by handing the money with accrued interest either to the de facto complainant or to the accused as the case may be depending upon the outcome of the case.

(viii) Liberty is given to the parties to approach this Court, if there is any difficulty in the implementation of the aforesaid directions.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

- 1) The Chief Judicial Magistrate,
Puducherry.

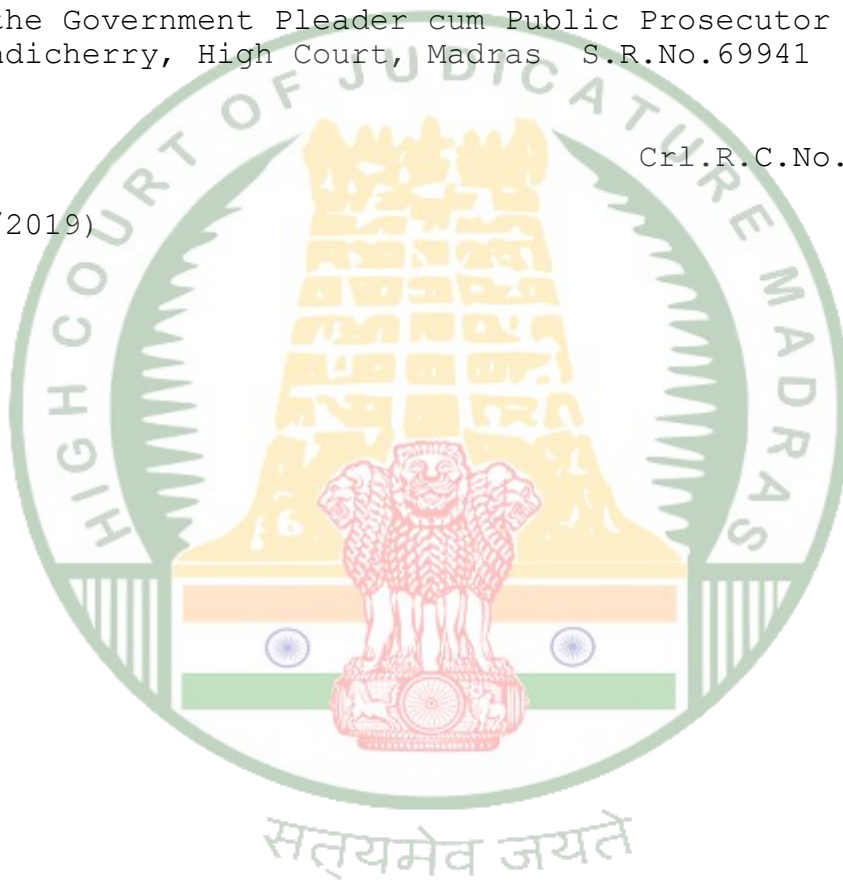
- 2) The Station House Officer,
C.I.D. Police Station,
Puducherry.
- 3) The Public Prosecutor,
O/o.The Government Pleader cum
Public Prosecutor for Pondicherry,
High Court, Madras.

+1 cc to M/s.Mcgan Law Firm, Advocate, S.R.No.69449

+1 cc to the Government Pleader cum Public Prosecutor
for Pondicherry, High Court, Madras S.R.No.69941

CrI.R.C.No.660 of 2019

MP (CO)
SSM(16/09/2019)



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