

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.730 of 2019
and Crl.M.P.No.10192 of 2019

The Branch Manager,
Muthoot Fincorp Limited,
Oppanakara Street,
Coimbatore.

... Petitioner/Petitioner

Vs.

1. The Inspector of Police,
B1-Bazaar (Crime) Police Station,
Coimbatore.

2. Madan Kumar,
S/o.Viswanathan,
52, Sellappa Gounder Street,
Kattuoor,
Coimbatore.

... Respondents/Respondents

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 08.07.2019 passed in C.M.P.No.602
of 2018 on the file of the Judicial Magistrate V, Coimbatore.

For Petitioner : Mr.N.Elumalai
For R1 : Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)
For R2 : No Appearance

O R D E R

This petition has been filed seeking to set aside the order
dated 08.07.2019 passed in C.M.P.No.602 of 2018 on the file of
the Judicial Magistrate V, Coimbatore.

2. This is the second round of litigation before this
Court. Earlier, V.Madhan Kumar, the de facto complainant in
Crime No.207 of 2014 filed Crl.O.P.No.13117 of 2016, in which,
this Court, on 24.06.2016, passed the following order:

"3. On the complaint lodged by the petitioner, the first respondent police registered a case in Crime No.207 of 2014 for offence under Section 381 IPC and after completing the investigation, filed the final report before the learned Judicial Magistrate No.V, Coimbatore, in C.C.No.30 of 2014 against one Chandrasekaran and A.Shansa and the case is now pending.

4. It is the case of the petitioner that he is the owner of the Jewellery shop and that, Chandrasekaran and Shansa were employees under him and they had stolen 300 gms Gold Jewellery, pursuant to which, the aforesaid FIR was registered. The accused were arrested and substantial portion of the jewellery was recovered and handed over to the petitioner under Section 451 Cr.P.C. While so, it appears that a Gold Chain weighing 40 grams was pledged by Chandrasekaran with Muthoot FinCorp Limited, Oppanakara Street, Coimbatore, under receipt No.6098 and the said Chandrasekaran has received a sum of Rs.75,000/-. Muthoot FinCorp Limited has accepted the Gold Chain on the bonafide plea that Chandrasekaran is the owner of it and granted Jewellery loan.

5. Now, it appears that there are prima facie materials to show that the Gold Chain is stolen property and therefore, Muthoot FinCorp Limited cannot have a better title than that of the accused. The first respondent police filed a petition in CrI.M.P.No.4234 of 2014 under Section 91 Cr.P.C. in Crime No.207 of 2014, based on which, the learned Judicial Magistrate has passed a very detailed and reasoned order dated 02.09.2014, by which, the property has been produced before the learned Judicial Magistrate and has been temporarily given custody to Muthoot FinCorp Limited. No notice was ordered to the petitioner in CrI.M.P.No.4234 of 2014. hence, he is before this Court.

6. Taking into consideration the facts and circumstances, this Court is of the view that it will serve the interest of justice, if the petitioner is given an opportunity to file an application under Section 451

Cr.P.C. before the learned Judicial Magistrate No.V, Coimbatore and on such filing, the learned Judicial Magistrate No.V is directed to pass appropriate orders with regard to the interim custody of gold chain to the petitioner, after hearing Muthoot FinCorp Limited and the State.

7. The learned Judicial Magistrate No.V is directed pass appropriate orders on the petition without being influenced by the earlier order dated 02.09.2014 in Crl.M.P.No.4234 of 2014. The order under Section 451 Cr.P.C. is not final and it is open to the Court change custody in appropriate cases".

3. Pursuant to the above directions, the de facto complainant filed C.M.P.No.602 of 2018 under Section 451 Cr.P.C. before the Judicial Magistrate V, Coimbatore, seeking interim custody of the said jewel, in which, the learned Magistrate, by order dated 08.07.2019, has ordered interim custody of the jewel to the de facto complainant, challenging which, Muthoot Fincorp Limited is before this Court.

4. Heard Mr.N.Elumalai, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the first respondent/State.

5. The learned counsel for the petitioner submitted that the Magistrate has given a finding that the property in question is a stolen property, even before the culmination of the trial and therefore, the order of the Magistrate suffers from infirmities.

6. This Court carefully perused the order passed by the learned Magistrate.

7. Though the Magistrate has given a finding that the property in question appears to be a stolen property, that will not in any manner affect the trial of the case nor that would be the basis for convicting the accused, because, the orders passed in interlocutory applications have absolutely no binding effect on the Court. For deciding the balance of convenience, the Magistrate has given a finding that there are prima facie materials to show that the property in question belongs to the de facto complainant. It is the duty of Muthoot Fincorp Limited to ensure that they do not receive stolen properties and give loan on them.

8. It is apropos to state here that a three Judge Bench of the Supreme Court, in Girish Kumar Suneja Vs CBI¹, has delineated the revisional jurisdiction as under:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C."

9. This Court does not find any infirmity in the order passed by the Trial Court warranting interference in revisional jurisdiction.

In the result, the criminal revision petition is dismissed. However, the Trial Court is directed to complete the trial of the case expeditiously, provided, there is no legal impediment. Connected Crl.M.P. is closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

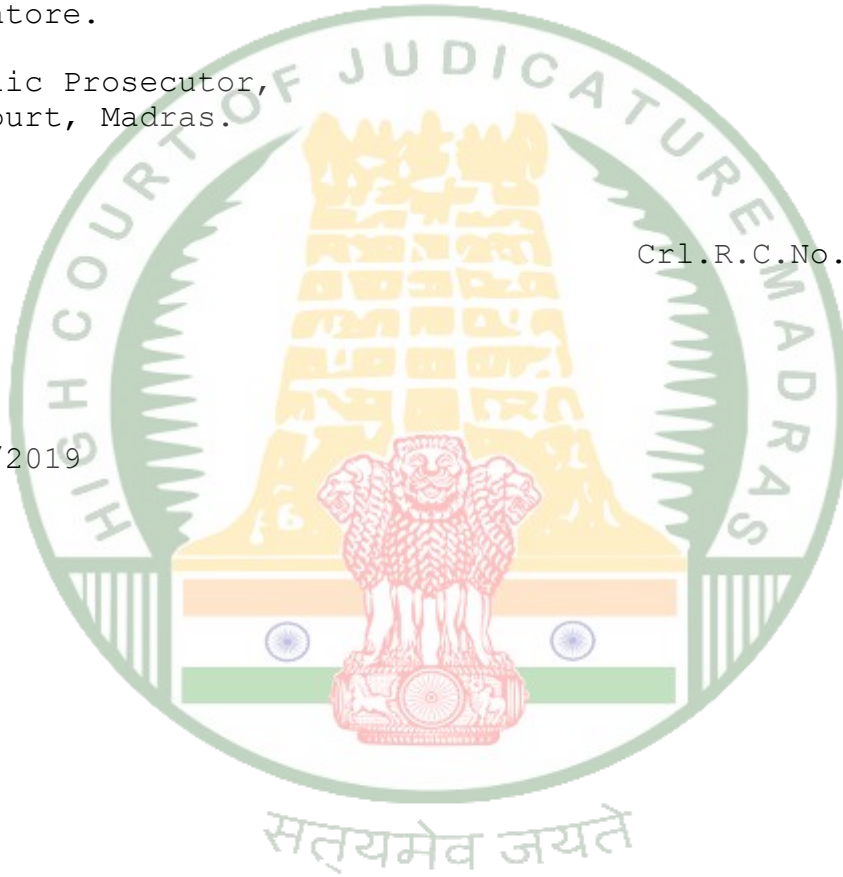
1 (2017) 14 SCC 809

To

1. The Judicial Magistrate V,
Coimbatore.
- 2.The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
B1-Bazaar (Crime) Police Station,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

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