

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.09.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.784/2019

G.Rajendiran

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Petitioner/Petitioner

Vs

The Inspector of Police,
Salem Township Crime Branch Police Station,
Salem City.

Respondent/Respondent

Prayer: This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C, against the order dated 25.07.2019 in Crl.MP.2549/2019 in Crime No.26/19 passed by the Judicial Magistrate-I, Salem.

For Petitioner : Mr.N.Desingu

For Respondent : M.Mohamed Riyaz, APP

ORDER

- 1.The revision has been filed by the petitioner, seeking to set aside the order in Crl.MP.No.2549/2019, dated 25.07.2019, passed by the Judicial Magistrate -I, Salem, dismissing the petition filed under section 451 of Cr.P.C. for return of property.
- 2.This Court heard the learned counsel on either side.
- 3.The petitioner is the owner of the jewellery shop, namely "Jayashree Jewellery" at Big Bazaar, Trichy-2. On 13/07/2019, the Assistant of the petitioner, who had gone to hand over a bag containing jewels, was robbed by three persons. Based on the complaint, given by the staff of the petitioner, a case was registered in Cr.No.26/2019 by the respondent for offence under sections 392, 397 & 506(ii) IPC. On the same day, the accused were arrested and the entire jewels were seized from them. The accused were remanded to the judicial custody and the jewels belonging to the petitioner recovered from the accused were produced before the court under Form 95 in C.P.No 58/2019. The petitioner had file a petition under Section 451 of Cr.P.C, seeking return of his properties in Crl.MP.2549/2019. The learned Magistrate had by the impugned order dismissed the

petition, stating that the petitioner had not furnished any documents, including customs documents to prove the ownership and that the case was triable by a Court of sessions. As against the order of dismissal the present petition has been filed.

4. The learned counsel for the petitioner would submit that the petitioner is involved in the business of jewellery making for about 25 years in the name and style of "Jayashree Jewellery" and his business is registered with the Sale Tax authority and the current registration Number is GSTNo.33AAMFJ4840M1Z1. He would submit that admittedly, the petitioner is the owner of the jewels and they have been robbed from his staff. The petitioner being involved in the business of gold and jewellery making, was having stocks of gold and he is also purchased gold from other persons and some of them were made into nose studs and ornaments and a part of the gold in the form of ingots were entrusted to goldsmith to make ornaments and while his staff was on the way to handover them to the goldsmith at Salem, he was robbed and thereafter, during investigation the entire jewels and ingots were recovered by the police. He would further submit that the petitioner had produced certificates issued by the Gold Assessors and other relevant documents to prove his ownership, however the trial court finding that no customs and other government documents being produced had dismissed the petition. He would submit that the business of the petitioner is registered with GST and that he has also produced the approval invoices before the trial court and that if the trial court had asked him for furnishing the details of purchase, he would have furnished them before the Court. He would submit that these properties were purchased through proper bills and that there is no objection from the respondent and nobody else has claimed that the gold belongs to them. The trial court without taking into consideration the evidence and documents produced had dismissed the same.
5. The learned counsel for the petitioner would submit that some of the jewels have been made on order by customers and that the petitioner has to deliver the same to the customers. He would submit that if the jewels is not returned by the Court the business of the petitioner will come to a standstill putting the petitioner to great difficulty since the customers are pressing him and that the petitioner is suffering financial loss day by day. The learned counsel would submit that he is prepared to furnish adequate security for the return of the jewellery and he is prepared to abide by any condition to be imposed by the trial judge. He would submit that the Hon'ble Supreme Court in 2013 (1) CTC 175 [Sunderbhai Ambalal Desai Vs.State of Gujarat] had held that the powers of courts to pass orders regarding property, pending trial are wide and should be exercised judiciously and expeditiously and that

exercise of such powers should be in such a manner to hold the owner of such property as otherwise keep the property may remain unused or misappropriate and that the property may be returned to the petitioner after preparing property punchanama. The learned counsel for the petitioner would submit that the jewels were purchased in the domestic market and that there is no need or necessity for the petitioner to possess customs documents for holding the same. Further there is no counter claim in respect of the jewels.

6. The respondent has filed a counter. The learned Additional Public Prosecutor would submit that since no proper documents have been produced by the petitioner, to prove the ownership, the trial Court has rightly dismissed the petition.
7. I have considered the submissions of the learned counsel on either side.
8. The Petitioner is the victim. Admittedly, on the complaint given by the Petitioner's Staff, a case in Cr.No.26 of 2019 has been registered by the Respondent. The Petitioner has now produced certain documents in the form of typed set before this Court to prove the ownership of the property and it is also submitted that the jewels/gold were purchased in the local market and thereby, there is no need for production of certificate from the Customs Authorities.
9. As per Section 451 of Cr.PC, at the time of disposal of the property, the Trial Court should keep the custody of the property under its control. The order is being passed by a Court of Law, either in terms of Section 451 or Section 457 of Cr.PC only during the pendency of the trial or enquiry. It is also apposite to mention that an order being passed under Section 451 of Cr.PC is temporary in nature. Indeed, an enquiry under Section 451 of Cr.PC Procedure need not be a detailed one, inasmuch as the said Section is summary in character. At the time of dealing with a Petition under Section 451 of Cr.PC, the Court is obliged and entitled to look into the statement made under Section 161 of Cr.PC, recorded by the Police or under Section 25 of the Indian Evidence Act, 1872.
10. At this juncture, it is necessary and relevant to refer to the decision reported in 2004 Cr.LJ 2778 (Yaswant Porwal Vs. State of Orissa), wherein it was held that where gold ornaments and other valuable articles snatched by an accused from the complainant are recovered from the possession of the accused and when the complainant prays for return of such things, such seized articles shall be returned to the complainant after taking security and bond so as to present evidence of being lost altered or destroyed.
11. In the decision of the Honourable Supreme Court reported in AIR 2003 SC 638 (Sunderbhai Ambala Desai Vs. State of Gujarat), it was laid down as follows:-
"With regard to valuable articles, such as golden or

silver ornaments of articles studded with precious stones, it is submitted that it is of no use to keep such articles in Police custody for years till the trial Court is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders, as contemplated under S.451, Cr.P.C., at the earliest.

For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, the seized articles be handover to the complainant after:-

1. Preparing detailed proper panchanama of such articles;
2. taking photographs of such articles and a Bond that such articles would be produced if required at the time of trial, and
3. after taking proper security.

For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under S.451, Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under S.451, Cr.P.C., to impose any other appropriate condition. In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in the bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchanama to keep such articles in a bank locker. In any case, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed.

12. The sum and substance of the principles laid down in the above decisions is that even the trial Court can take a security and bond in regard to the gold/silver ornaments and

other valuable articles to be returned, so as to prevent evidence being lost or altered, and for such an exercise, the trial Court can impose necessary restrictions, at the time of passing an order for return of property.

13. In the case on hand, the Petitioner/Defacto Complainant had mentioned and described, in detail, about the properties (gold bar and gold jewels), and also produced some documents to prove ownership. Further, there is no rival claimant to the properties and admittedly as per the prosecution the properties have been robbed from the staff of the petitioner and they have been recovered from the accused in CrI.MP.No.2549 of 2019, filed under Section 451 of Cr.PC in Cr.No.26 of 2019.

14. In the light of the aforesaid decisions and discussion above this Criminal Revision Case is disposed of, with the following directions:-

i. The impugned order, dated 25.07.2019 made in Cr.MP.No.2549 of 2019, passed by the Judicial Magistrate-I, Salem, is set aside.

ii. The Petitioner shall appear in person and produce the original bills before the court below to prove ownership of the articles.

iii. On the Petitioner, complying with the above condition (ii), the court below shall return the articles to the Petitioner, after preparing proper 'panchanama', such as, weight and description of the articles and after taking individual photographs of the articles. The process shall be conducted in the presence of the Respondent Police and further

iv. The Petitioner shall furnish a security to the value of Rs.30,00,000/- (Rupees thirty lakhs only) in the form of production of a original documents of a property to such value and the Petitioner shall also execute a bond for a sum of Rs.30,00,000/- (Rupees thirty lakhs only) with two sureties.

v. The document security furnished by the Petitioner will remain in the custody of the Trial Court, till the trial is over or until further orders.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate-I, Salem

2.The Inspector of Police,
Salem Township Crime Branch Police Station,
Salem City.

3. The Public Prosecutor, High Court, Madras.

+lcc to Mr.N.Desingu, Advocate sr.78381

Cr1.RC.No.784/2019

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nr 09/10/2019



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