

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 07.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1311 of 2018

in

Crl.M.P.No.3748/2019

Palanivel

...Petitioner/defacto Complainant

-Vs-

The State by

The Inspector of Police,
Thalaivasal Police Station,
Salem District.

***Crime No.177 of 2017**

...Respondent/Complainant

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to set aside the order dated 07.05.2018 passed in Crl.M.P.No.660 of 2018 on the file of Judicial Magistrate No.II, Attur and to allow the above Criminal Revision.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.G.Harihara Arun Somasankar
Government Advocate (Crl.Side)

O R D E R

The above Criminal Revision Petition filed against the Order of the Judicial Magistrate No.II, Attur in Crl.M.P.No.660 of 2018 dated 07.05.2018 rejecting the petition filed by the petitioner herein, under Section 451 of Cr.P.C for return of the property.

2.According to the revision petitioner herein, who is the de-facto complainant, the accused has robbed 34 sovereigns of gold, Rs.7,20,000/- in cash and skoda rapid Car from the house of the petitioner. Thereafter, a complaint was lodged by the petitioner and on the basis of the complaint case was registered under Section 392 of I.P.C against the accused. In the Course of investigation a sum of Rs.2,50,000/- was seized from the accused persons and the cash was later on handed over to the custody of the learned Judicial Magistrate.

3. Since, the portion of the money was recovered from the accused and which money belonging to the petitioner herein, he filed a petition before the learned Judicial Magistrate under Section 451 of Cr.P.C to return the money for a sum of Rs.2,50,000/- recovered from the accused. The learned Judicial Magistrate after hearing the parties concerned and on the basis of the objection put-forth on behalf of the prosecution and rejected the petition. The learned Judicial Magistrate reasoned that if the recovered money is returned, it will hamper the progress of the trial. The learned Judicial Magistrate has also held that the investigation was still not over. If the money is returned, the petitioner herein would deal with the same and the same would not be available for completion of the trial. As against the order passed by the Judicial Magistrate, the present Criminal Revision Petition has been filed.

4. The learned counsel appearing for the petitioner would submit that admittedly there was no counter claim in regard to the money recovered from the accused person. Since, the petitioner herein was in requirement of the money which was robbed from him by the accused persons, he had moved the trial for return of the money. But, unfortunately, the trial Court has dismissed the same on the ground that it would hamper the progress of the trial. He would submit by return of the money, there was absolutely no scope for trial being affected as the Court can always impose condition for securing the personal bond from the petitioner herein for the amount which is sought to be returned. Moreover, in the absence of any counter claim, the money rightfully belongs to the petitioner herein and therefore, there is no legal impediment for return of the property to the petitioner herein.

5. This Court has considered the submissions made on behalf of the petitioner and also the submissions made on behalf of the prosecution and is of the considered view that there is force in the contention put-forth on behalf of the revision petitioner. When admittedly the money which belongs to the petitioner has been robbed by the accused and the same having been recovered by the respondent, this Court is unable to see as to how by returning the money the trial will get affected. Therefore, this Court is of the view the petitioner being a rightful owner of the property, cannot be denied his due and the return of property would not any way hamper the progress of the trial and would not undermine the due process of law. Therefore, considering the materials and pleadings placed on record, the impugned order dated 07.05.2018 in CrI.M.P.No.660 of 2018, is hereby set aside and the present Criminal Revision Petition is allowed on the following terms:

(i) The learned Judicial Magistrate shall return the cash of Rs.2,50,000/- to the petitioner, after recording the currency note numbers in the property register, if not already recorded.

(ii) The revision petitioner shall execute a personal bond for a sum of Rs.2,50,000/- for the satisfaction of the said Magistrate.

(iii) The revision petitioner is also permitted to deal with the cash as he deems fit.

(iv) It is made clear that no property document, solvency certificate or surety shall be insisted upon from the petitioner.

Sd/-

Assistant Registrar(CO)

Dated: 06.02.2019

*** Amended as per order of this
Court vide CrI.M.P.No.3748/2019
in CrI.R.C.No.1311 of 2018 dated
13.03.2019**

sd/- Assistant Registrar(CO)

Dated: 18.03.2019

//True Copy//

Sub Assistant Registrar

rna

To

1.The Judicial Magistrate No.II,
Attur.

To be substituted to the
order already despatched on
01.03.2019

2.The Chief Judicial Magistrate,
Salem.

3.The Inspector of Police,
Thalaivasal Police Station,
Salem District.

4.The Public Prosecutor,
High Court, Madras-104.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.23763

CrI.R.C.No.1311 of 2018

VD(CO)

rrs 07/02/2019

SP(18/03/2019)