

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Date of Reservation	18.06.2019
Date of Order	24.06.2019

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CORAM**THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI****Cr1.RC(MD)No.309 of 2019**

Alaudhin

: Petitioner/Petitioner/
Owner of the money

Vs.

State represented through
The Inspector of Police,
Tirunelveli District.
(Crime No.66 of 2019): Respondent/Respondent/
Complainant

Prayer: This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, against the order of dismissal made in Cr1.M.P.No.1503 of 2019, dated 03.04.2019 on the file of the Judicial Magistrate, Cheranmahadevi, dismissing the petitioner's application filed under Sections 457 and 451 of the Criminal Procedure Code, seeking to return of Cash of Rs.50,100/- seized from the petitioner, pending disposal of the trial in Crime No.66 of 2019 on the file of the respondent police.

For Revision Petitioner : Mr.S.Velmurugan

For Respondent : Mr.APG Ohm Cairma Prabhu
Government Advocate
(Criminal side)**O R D E R**

The petitioner claims to be the owner of the money of Rs.50,100/-. The respondent police has registered a case in Crime No.66 of 2019 as against the petitioner and seized money of Rs.50,100/-, which was earned by illegal sale of tobacco products and it was handed over to the Judicial Magistrate, Cheranmahadevi under Form No.90. Seeking return of the said amount, the petitioner filed a petition in Cr1.M.P.No.1503 of 2019 before the learned Judicial Magistrate, Cheranmahadevi, for interim custody. The learned Judicial Magistrate, by order, dated 03.04.2019 has dismissed the same. Challenging the said order, the petitioner is before this Court with this criminal revision.



2.The learned counsel appearing for the petitioner submitted that the learned Magistrate has failed to appraise the admitted fact that indeed cash of Rs.50,100/- is seized from the petitioner, whereas the learned Magistrate held that the petitioner has not produced any record to show that the cash belongs to him and that the petitioner being the house owner and relative of the 1st accused has been falsely implicated in this case and actually, the petitioner is a Jeweller doing Jewellery business in Tirunelveli Town in the name and style of "Nila Jewellers" and the cash was seized from his cash bag, which is his family savings and if the cash is not returned, the petitioner will be put to irreparable financial loss and great hardship. It is further submitted by the learned counsel that dismissal of the petition for return of cash is contrary to the guide lines of the Hon'ble Apex Court and the order of the trial court being a non-speaking order, it has to be set aside and appropriate order to be passed directing the trial court to return the money, by relying upo the judgment of the Hon'ble Supreme Court reported in **(2002)10 SCC 287 (Sundarbhal Ambalal Desi Vs. State of Gujarat)**. In view of the above circumstances, he prays that the impugned order passed by the trial court has to be set aside and the criminal revision has to be allowed.

3.The learned Government Advocate (Criminal side) appearing for the respondent/State submitted that the alleged cash was seized for the petitioner for the illegal selling of tobacco produces and the alleged cash is still in the custody of the concerned court and prays for dismissal of the criminal revision.

4.Heard the learned counsel appearing on either side and perused the materials available on record.

5.It is not in dispute that the house of the petitioner was searched by the respondent police party and found prohibited tobacco items and on the confession statement of the petitioner, a sum of Rs.51,100/- was seized by the police and now, the seized amount was in the custody of the Judicial Magistrate, Cheranmahadevi.

6.The only ground upon which the lower court has dismissed the petition is that the petitioner has not produced any records to show that the cash belongs to him. Perusal of the judgment of the Hon'ble Apex court reported in **(2002)10 SCC 287 (Sundarbhai Amabalal Desai Vs. State of Gujarat)**, it has been held that the dismissal of the petition for return of cash is contrary to the guide lines of the Hon'ble Supreme Court and the order of the trial court being a non-speaking order, it has to be set aside and appropriate order to be passed directing the trial court to return the money.



7. Considering the rival submission and guidelines of the Hon'ble Supreme Court in the judgment referred supra, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside.

8. In fine, this revision is **allowed** and the order of the learned Judicial Magistrate, Cheranmahadevi, passed in CrI.M.P.No.1503 of 2019, dated 03.04.2019 is set aside and the learned Judicial Magistrate is directed to return the cash to the petitioner subject to the following conditions:-

(a) The petitioner is directed to furnish bank guarantee to the said amount and also file affidavit that he will not dispute the seized of the money or the identify of the money;

(b) On such affidavit and production of the bank guarantee in favour of the Judicial Magistrate, Cheranmahadevi, the trial court is shall take photographs of currency and return the money to the petitioner; and

(c) The petitioner shall also give an undertaking to the effect that at the end of the trial, if the money is found to be ill gotten, the petitioner shall deposit Rs.50,100/- with interest @ 12% p.a within the time stipulated besides invocation of the bank.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate, Cheranmahadevi, Tirunelveli District.
2. The Chief Judicial Magistrate, Tirunelveli.
3. The Inspector of Police, Tirunelveli District.
4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

+ 1 CC to Mr.S.Velmurugan, Advocate in Sr.No.70867

Order made in
CrI.R.C (MD) No.309 of 2019

24.06.2019