



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2019

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.5103 of 2017

and

CRL.MP(MD)No.3610 of 2017

M.Ponraj @ Raja

... Petitioner/Petitioner/
Respondent/1st Accused

Vs.

1.Ariyal

... Respondent/Respondent/
Petitioner/Defacto Complainant

2.The Sub Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.
(Crime No.184/2003)

... Respondent/Respondent
3rd Party/Complainant

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed by the learned Principal District and Sessions Court, Pudukkottai in Crl.R.CNo.20/2014 dated 28.10.2014, confirming the order passed by the learned District Munsif cum Judicial Magistrate, Thirumayam in C.M.P.No.6963/2012 dated 12.12.2012 and consequently directing the learned Magistrate to return the jewel, marked as M01, to the petitioner .

For Petitioner : Mr.A.Rahul

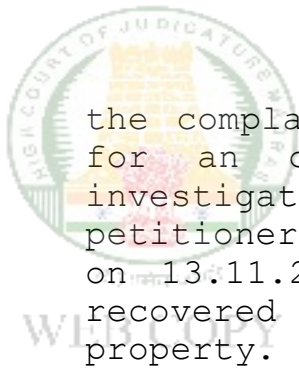
For R1 : Mr.Arun Prasad

For R2 : Mr.M.Chandrasekaran (APP)

ORDER

This petition has been filed challenging the order passed by the Court below directing the case property to be handed over to the first respondent.

2. It is seen from records that the first respondent had given a complaint to the second respondent police on the ground that her gold chain was snatched by unknown accused persons and based on



the complaint, an FIR came to be registered in Crime No.184/2003 for an offence under Section 379 IPC. In the course of investigation, two accused persons were identified and the petitioner was added as A1 in the final report. He was arrested on 13.11.2003. The stolen property viz., gold chain was also recovered and was handed over to the Court and was made as a case property.

3. After completion of the investigation, final report came to be filed before the learned District Munsif cum Judicial Magistrate, Thirumayam and the same was taken on file in C.C.No.156/2004.

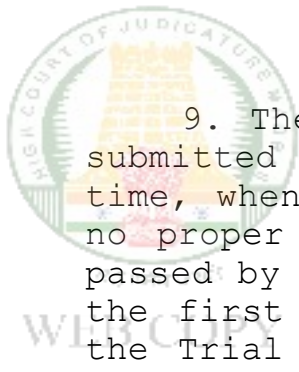
4. The Trial Court framed charges against the accused persons for an offence under Section 379 of IPC. After a full fledged trial, the learned District Munsif cum Judicial Magistrate, Thirumayam, acquitted both the accused persons by giving the benefit of doubt to them and after taking into consideration the various discrepancies in the case of the prosecution. This judgment was passed on 25.10.2004. In the last portion of the judgment, the Trial Court had specifically stated that with regard to the disposal of the case property, separate enquiry and orders will be passed and till then, the material object will be kept in the custody of the Court.

5. The first respondent filed an application in the year 2012 seeking for return of the property by claiming ownership over the property.

6. The learned District Munsif cum Judicial Magistrate, Thirumayam by an order dated 12.12.2012, directed return of property to the first respondent, who was the defacto complainant in this case. This order was passed in exercise of its jurisdiction under Section 452 of Cr.P.C.

7. The petitioner being aggrieved by the order passed by the Trial Court, filed a Criminal Revision before the learned Principal Sessions Court, Pudukottai in Crl.R.C.No.20/2014.

8. The Revision Court after considering the entire facts and circumstances of the case came to the conclusion that the petitioner neither made any attempt to claim for the property nor did the petitioner give any proof for owning the property and therefore, the revision Court found that the petitioner did not have any right to get the property returned in his favour and thereby, the revision Court confirmed the order passed by the Trial Court.

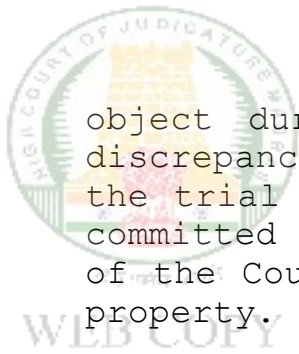


9. The learned counsel appearing on behalf of the petitioner submitted that the petitioner was facing incarceration at the time, when the order has passed by the Trial Court and therefore, no proper notice was given to the petitioner before orders were passed by the trial Court for returning the property in favour of the first respondent. The learned counsel further submitted that the Trial Court was swayed by the only fact that the petitioner did not make any attempts to file any petition seeking for return of property for nearly 8 years and that by itself became the ground to deny the petitioner, the property that was seized by the respondent police. The learned counsel also brought to the notice of this Court, the findings of the Trial Court while acquitting the petitioner from the criminal case and submitted that there was a discrepancy with regard to the weight of the gold chain which was marked as a material object and there was material contradiction to show that the first respondent was not even the owner of the jewel.

10. Per contra, the learned counsel appearing on behalf of the first respondent submitted that the case property was admittedly recovered in the course of investigation after the petitioner was arrested. It was the first respondent, who lodged a complaint regarding her gold chain being stolen by the accused persons. Just because, there was some discrepancies that were found by the trial Court for acquitting the accused persons, that by itself will not dis-entitle the first respondent from receiving the stolen property. The learned counsel further submitted that the petitioner did not even take a defence that the stolen property belongs to him, at the time of trial and therefore, the petitioner for the first time claims, ownership over the property only after the first respondent moved an application for return of property. The learned counsel concluded his arguments by submitting that there is no ground to interfere with the order passed by the Court below.

11. This Court has considered the submissions made on either side and the materials available on record.

12. One fact, which emerges from the order passed by the Court below and the materials available on record is that at no point of time, the petitioner had claimed ownership over the property, till the first respondent moved an application seeking for return of property. It was not even the defence of the petitioner during the trial that the property belongs to him. Whereas, right through, the first respondent has claimed ownership over the property and this property was recovered by the prosecution in the course of investigation and it was also marked as a material



object during the trial. It must be borne in mind that the discrepancies that were found in the case of the prosecution by the trial Court, should confine itself with regard to the offence committed by the accused persons and that cannot come in the way of the Court independently enquiring an application for return of property.

13. The judgment was passed by the trial Court in the year 2004 and the petitioner did not make any attempts to file an application seeking for return of property at any point of time, either during the pendency of the trial or after the case was disposed of. The first respondent filed an application for return of property in the year 2012 and it was only thereafter, the petitioner started claiming ownership over the property.

14. The scope of enquiry under Section 452 of Cr.P.C is more summary in nature. The Criminal Court does not exercise its jurisdiction as if it is acting like a Civil Court deciding the title over the property. The order passed under Section 452 of Cr.P.C is more consequential in nature and it pertains to only disposal of the property after the conclusion of the trial.

15. In the present case, the material on record shows that it was the first respondent who was claiming ownership over the property right through. Therefore, both the Courts below took that in to consideration and returned back the property to the first respondent. This Court does not find any illegality or infirmity in the order passed by the Courts below. That apart, this Court cannot treat this Criminal Original Petition as a Second Revision Petition, since the same is barred under Section 397 (2) of Cr.P.C. The scope of interference against an order passed in a revision petition is very limited and this Court cannot re-appreciate the findings of the Courts below which are based on certain materials, upon which reliance has been placed.

16. In the result, this Court does not find any ground to interfere with the order passed by the Courts below. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Principal District and Sessions Court,
Pudukkottai.

2.The District Munsif cum Judicial Magistrate,
Thirumayam.

3.The Sub Inspector of Police,
Thirumayam Police Station,
Pudukkottai District.

COPY TO

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**+1 CC to M/s.A. ARUN PRASAD, Advocate (SR-85262[F] dated
05/09/2019)**

+1 CC to M/s.A.RAHUL, Advocate (SR-85712[F] dated 06/09/2019)

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and

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