

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.RC.No.153 of 2020

Devandran

..Petitioner/Defacto Complainant
Vs.

1.State Rep by

The Inspector of Police,
Fairlands Police Station,
Salem City, Salem District.
Cr.No.187 of 2019.

2.Kandasamy

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C, to call for the records and set aside the order made in Crl.MP.No.4245 of 2019 dated 21.11.2019 by the Judicial Magistrate No.I, Salem, Salem District in Crime No.187 of 2019 on the file of the first respondent and pass an order to return of gold, silver and cash of Rs.5,50,000/- to the petitioner.

For Petitioner : Mr.P.Kalimuthu

For Respondents : Mr.T.Shanmugarajeswaran

Government Advocate (Crl.Side)for R1
No appearance for R2

ORDER

This Criminal Revision has been filed by the defacto complainant to set aside the order passed by the Judicial Magistrate No.1, Salem in Crl.MP.No.4245 of 2019 dated 21.11.2019.

2. The petitioner herein has lodged a complaint before the first respondent on 28.09.2019 stating that gold jewels weighing about 10 sovereigns, silver articles weighing about one kg and cash of Rs.5,50,000/- were stolen from his house and based on the said complaint, the first respondent has registered an FIR in Cr.No.187 of 2019 under Sections 454 and 380 of IPC. After registering the FIR, the first respondent took the matter for investigation. During investigation on 04.10.2019, the first respondent has arrested the second respondent herein and obtained a confession from him. In the said confession, the second respondent has admitted that he only committed theft in the petitioner's house on 28.09.2019 and stolen the gold jewels

and silver articles and also a cash of Rs.5,50,000/- and based on the said confession, the aforesaid properties were recovered and produced before the Judicial Magistrate No.1, Salem. Thereafter, the petitioner herein has filed an application under Section 451 of Cr.P.C in CMP.No.4245 of 2019 seeking interim custody of the aforesaid properties.

3. The learned Judicial Magistrate No.1, Salem by his order dated 29.11.2019 has dismissed the said petition by stating that the petitioner has not produced any proof to show that he is the owner of the aforesaid properties. Aggrieved by the same, the petitioner has filed a present petition.

4. Though the private notice was served on the second respondent / accused and his name was also printed in the cause-list, he has not appeared in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner / defacto complainant and the arguments of the learned Government Advocate (Crl.Side) who is appearing for the first respondent and perusing the materials produced before this Court, the order is being passed in this petition.

5. The learned counsel for the petitioner has submitted that only based on the complaint lodged by the petitioner, the first respondent has registered an FIR in Crime No.187 of 2019 under Sections 454 & 380 of IPC and thereafter during investigation, the first respondent has arrested the second respondent / accused and the second respondent / accused voluntarily gave a confession statement before the first respondent admitting the offences that he only stolen the aforesaid properties from the petitioner's house and based on the said confession, the aforesaid properties have been recovered and produced before the Trial Court and that being so, the Trial Court ought not to have insisted the petitioner to produce proof to show that he is the owner of the aforesaid properties and therefore he prayed to set aside the order passed by the Judicial Magistrate No.1, Salem and direct the concerned Magistrate to return the aforesaid properties to the petitioner for interim custody.

6. The learned Government Advocate (Crl.Side) who is appearing for the first respondent has fairly conceded that only based on the complaint lodged by the petitioner, FIR was registered and after registering the FIR, the second respondent was arrested and the second respondent gave a confession voluntarily and based on the same the properties involved in the aforesaid case were recovered and produced before the Trial Court. He further submitted that there is no dispute with

regard to ownership of the property and therefore he prayed to pass suitable orders.

7. A perusal of the FIR shows that based on the complaint lodged by the petitioner herein, the first respondent has registered an FIR in Cr.No.187 of 2019 on 28.09.2019 under Sections 454 and 380 of IPC. In the said FIR, it is clearly stated that the gold jewels weighing about 10 sovereigns and silver articles weighing about 1 kg and cash of Rs.5,50,000/- were stolen from his house. The confession statement recorded from the second respondent shows that on 04.10.2019, the second respondent was arrested by the first respondent and he was enquired and during investigation, the second respondent gave a confession admitting the fact that he has stolen the aforesaid jewels, silver articles and cash from the petitioner's house and further he has stated that he has melted the jewels and silver articles and made it as bars. Further he has stated that he is keeping the amount and the aforesaid bars in his house and based on the said confession, the aforesaid amount and gold and silver bars were seized and produced before the Court. There is no rival claim.

8. Under the said circumstances, the finding of the learned Judicial Magistrate No.1, Salem that the petitioner has not produced any proof to show that he is the owner of the aforesaid property is liable to be set aside.

9. In the result, this Criminal Revision Petition is allowed. The order passed by the Judicial Magistrate No.1, Salem in CrI.MP.No.4245 of 2019 dated 21.11.2019 is set aside. The learned Judicial Magistrate No.1, Salem is directed to return the aforesaid properties to the petitioner with the following conditions:

(i) The petitioner shall execute a bond for a sum of Rs.10,00,000/- to the satisfaction of the Judicial Magistrate No.1, Salem.

(ii) preparing detailed panchanama of such articles and taking photographs of such articles duly attested by the concerned Judicial Magistrate; and

(iii) that the petitioner shall produce the said articles as and when required by the court.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.1,
Salem District.
2. The Inspector of Police,
Fairlands Police Station,
Salem City, Salem District.
3. The Public Prosecutor,
High Court of Madras, Chennai.

+1 cc to M/s.P.Kalimuthu,Advocate Sr.No. 18669

AKM/13.03.2020/4P-5C /

Crl.R.C.No.153 of 2020



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