IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1114 of 2020

N.Rajkumar ... Petitioner

Vs.

The Inspector of Police,
K-5, Peravallur Police Station,
Peravallur, Chennai-82. ... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order dated 14.10.2020 made in Crl.M.P.No.11534 of 2020 in C.C.No.369 of 2011 on the file of the V Metropolitan Magistrate Court, Egmore, Chennai, allow the Criminal Revision Petition.

For Petitioner : Mr.B.R.Shankaralingam
For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

O R D E R

This Criminal Revision has been filed to set aside the order dated 14.10.2020 made in Crl.M.P.No.11534 of 2020 in C.C.No.369 of 2011 passed by the learned V Metropolitan Magistrate, Egmore, Chennai.

2.The petitioner is the defacto complainant in Crime No.673 of 2001. The FIR in Crime No.673 of 2001 came to be registered on 20.12.2001, for offence under Sections 457 and 380 r/w 34 IPC against the accused viz., Androse/A1, Bala @ Balakrishnan/A2 and Bommi @ Shanthi/A3. The gist of the complaint is that the petitioner had gone to Bangalore for vacation from 15.12.2001 to 20.12.2001. On his return back, he saw his house was opened and the jewels, silver articles, cash and other valuable articles were burgled. Normally, the petitioner and his family members whenever going for vacation and for any other purpose, they used to leave the house in custody of the housemate one Bommi @ Shanthi/A3. A3 had been working in the house of the petitioner for the past 10 years and gained confidence. A3 became friendly with A1/Androse, who was a newspaper delivery man and they were having happy times. A1 was in need of money. Hence, he and his friend A2/Bala @ Balakrishnan planned along with A3 and committed the house breaking and burgled the jewels, silver articles, cash

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

of Rs.65,000/- and other valuable articles on 19.12.2001, taking advantage of absence of the petitioner and his family members.

3.The petitioner lodged a complaint to the respondent Police and an FIR in Crime No.673 of 2001 was registered. Initially, the fact was not known to the petitioner when he lodging the complaint. After enquiry, the Inspector of Police, K-5 Peravallur Police Station, Chennai closed the case as 'Undetectable' and filed closure report on 04.08.2014 and served R.C.S.No.05 of 2004 to the petitioner on 24.08.2014. Challenging the same, the petitioner filed a protest petition before the learned V Metropolitan Magistrate, Egmore, Chennai. The learned V Metropolitan Magistrate, Egmore, Chennai directed the Assistant Commissioner of Police, Sembiyam Range, Chennai to conduct investigation by the Inspector of Police, K-1 Sembiyam Police Station, Chennai. The Inspector of Police, K-5 Peravallur Police Station, Chennai was entrusted to conduct further investigation. During investigation, on 08.09.2009, A3 was taken into custody and she confessed about her involvement in committing the offence with the other accused. In the meanwhile, the petitioner filed a petition before this Court in Crl.O.P.No.19763 of 2009 and this Court directed the Assistant Commissioner of Police, Washermenpet Range to monitor the investigation and he entrusted the case diary to K-5 Washermenpet Police, who took up the investigation examined A3. A3 gave statement under Section 164 Cr.P.C., before the learned XIX Metropolitan Magistrate, Egmore Chennai on 29.12.2009, admitting the offence and the involvement of the other accused A1/Androse and A2/Bala @ Balakrishnan. A1 and A2 were arrested on 22.01.2010 and they confessed that they joined together along with A3 and committed the house breaking and burgled the jewels, silver articles, cash and other valuable articles from the petitioner's house. On their remand, A1 and A2 were further taken into police custody on 27.01.2010. At that time, they reiterated the earlier confession and further stated that some of the burgled jewels were pledged with Jawahar Neethi Limited and some were converted and changed into other form of jewels. Using these jewels, A1 conducted his daughter marriage and also gifted jewels to his wife. A2 gifted some jewels to his wife and also used for his personal use. Pursuant to the confession, a portion of the jewels of 56 sovereigns could be recovered and the same were produced before the trial Court, which were taken as case property in A.No.71 of 2010. The petitioner filed a petitioner for return of jewels in Crl.M.P.No.1581 of 2010, the trial Court, by order, dated 23.04.2010 rejected the claim of the petitioner, stating that the charge sheet is yet to be filed. The respondent Police on completion of investigation, filed charge sheet on 09.02.2017. The trial Court had taken the same on file and assigned C.C.No.369 of 2011 and thereafter, the case has been kept pending without any progress.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

4.The petitioner filed a petition under Section 451 Cr.P.C., in Crl.M.P.No.11534 of 2020 seeking return of 56 sovereigns of gold jewels, which were seized as case property. The trial Court, by order, dated 14.10.2020 dismissed the petition on the ground that the ownership of the jewels would be decided only after examination of witnesses and taking evidence and referred the earlier order dated 23.04.2010 stating that the trial Court cannot cancel the earlier order without examining witnesses and completing the trial, against which the present revision.

5.The learned counsel for the petitioner submitted that the trial Court has not made a judicious approach to decide the issue involved in the petition for return of property. The trial Court failed to note that the order passed in earlier application for return of property was that, no charge sheet has been filed. The learned counsel further submitted that the present petition has been filed after filing of charge sheet, which is lost sight of. Further, the respondent Police has no objection for return of jewels to the petitioner. After filing of the charge sheet, the trial Court has not progressed the case for the past 9 years and all the three accused are now no more and nothing is left for adjudication. The petitioner has been deprived of his gold jewels for the past 19 years. The learned counsel further submitted that the statement under Section 164 Cr.P.C., of A3 and the confession statement of A1 and A2 leading to recovery of 56 sovereign of gold jewels, which clearly proved that the jewels were burgled from the house of the petitioner. In view of the same, there cannot be claim by any one other than the petitioner more so Jawahar Neethi Private Limited.

6.The learned Additional Public Prosecutor appearing for the respondent filed status report and made his submissions that the petitioner lodged a complaint on 20.12.2011 stating that the petitioner after return back to home, he found that 105 sovereigns of gold jewels, cash of Rs.65,000/- and silver articles were burgled from his house. On the complaint of the petitioner, a case in Crime No.673 of 2001, for offence under Sections 457 and 380 IPC was registered on 20.12.2001 by Marisamy, the then Special Sub Inspector of Police, K-5 Peravallur Police Station, Chennai and the investigation was taken up by the Inspector of Police Karuppasamy. The Inspector of Police visited the place of occurrence, prepared Observation Mahazar and Rough Sketch in the presence of witnesses and also examined 5 witnesses and recorded their statements. After completion of investigation, on 04.08.2004, the then Inspector of Police closed the case in Crime No.673 of 2001 as "Undetectable" and served R.C.S.No.05 of 2004 to the petitioner on 24.08.2004 and filed the final report with served R.C.S notice before the learned V Metropolitan Magistrate, Egmore, Chennai. Thereafter, the petitioner filed a protest petition before the learned V Metropolitan Magistrate, Egmore, Chennai seeking reinvestigation in the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

said case. The trial Court directed Panneerselvam, the then Inspector of Police, to take up the case for further investigation. Later on 12.09.2009, the Inspector of Police arrested A3 while she was arrested in K-5 Police Station in Crime No.251 of 2009, for offence under Section 380 IPC. As per direction, the Assistant Commissioner of Police, Sembiyam Range, Chennai, the then Inspector of Police, K-1 Sembiyam Police Station [Crime] took up the case for further investigation.

7.Subsequently, the petitioner approached this Court for further investigation. This Court ordered for further investigation. As per the order, the Assistant Commissioner of Police, Washermenpet, Chennai directed the investigation to be conducted by the Inspector of Police, H-6 R.K.Nagar Police Station. Thereafter, A3 gave confession under Section 164 Cr.P.C., before the learned XIX Metropolitan Magistrate, Allikulam, Chennai. From the statement of A3, it came to light of the involvement and role played by A1 and A2. Based on the statement, on 22.01.2010, Androse/A1 and Bala @ Balasubramanian/A2 were arrested and they gave a confession admitting the involvement in committing the offence. The properties such as bracelets, rings, dollar chains, necklace etc., totally 56 sovereigns were seized under cover of seizure mahazar. These articles were produced along with the other accused before the Court and case property in A.No.71 of 2010, dated 13.04.2010 was assigned. During investigation, it came to know that A1 and A2 had committed the house breaking and burglary of jewels from the petitioner's house with the help and connivance of A3. The gold jewels were changed into various other forms and a portion of jewels were pledged in Jawahar Neethi Limited.

8.On completion of investigation, charge sheet came to be filed against three accused A1, A2 and A3 for offence under Sections 457 and 380 r/w 34 IPC, citing 25 witnesses and listed documents. The properties have already been produced before the trial Court and the same is in custody of the Court. The learned V Metropolitan Magistrate, Egmore, Chennai had taken the charge sheet on file and assigned C.C.No.369 of 2011 on 05.02.2011. From then on, the case has been kept pending for appearance of the accused. The prosecution has no serious objection for the property / jewels to be returned to the petitioner.

9. .During trial, A1 and A2 died and their death certificate were produced before the trial Court on 23.10.2010 for A1 and on 03.08.2015 for A2. Now, it has come to knowledge that A3 also died and her body has been cremated. The statement of Tahsildar and the caretaker of burial ground are in conformity to the same. The requisition was made to Tahsildar, Tambaram seeking death certificate of A3. The accused A1 to A3 died and no more, now nothing survives in this case, after obtaining the death certificate of A3 and

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

case before the trial Court would be closed.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is not in dispute that the burglary has been committed by the accused in the house of the petitioner on 19.12.2001. A3 was housemaid in the petitioner's house and she was staying in the house along with the petitioner and his family for the past 10 years, gaining confidence. Further, she was allowed to stay in the house even in the absence of the petitioner and his families. A3 developed friendship with A1, who was a newspaper delivery man. The friendship between A1 and A3 developed further and they were having close relationship, which is admitted by both A3 and A1. A1 and A2 are close friends both were in need of money for various reasons, which is also not in dispute. Thus, A1 and A2 in connivance with A3 committed the house breaking and burglary taking advantage of the absence of the petitioner and his families. Initially, the investigation was not satisfactory, then Inspector of Police filed a closure report as "Undetected" on 04.08.2004. The petitioner who lost nearly 105 sovereigns of gold jewels, silver articles and cash, have been consistently following the case.

12.The petitioner filed a protest petition against the closure of the investigation. The learned V Metropolitan Magistrate, Egmore, Chennai directed the Assistant Commissioner, Sembiam to monitor the investigation and thereafter, only some progress in the case. Initially, the slumber of Police is conceivable for the reason that the younger brother of A1 Jayapal Barnapas is the Inspector of Police in Palayankottai. Thereafter, the petitioner filed a petition before this Court in Crl.O.P.No.19763 of 2009 and this Court directed the Assistant Commissioner of Police Washermenpet Range to monitor the investigation. The Assistant Commissioner of Police, Washermenpet entrusted the investigation to the Inspector of Police, R-5 Washermenpet Police, who took up the investigation further and recorded the statement 164 Cr.P.C., of A3. A3 disclosed the involvement of A1 and A2 in committing the offence. A1 and A2 were arrested and they have confessed about their involvement in committing the offence. Based on the confession, a portion of 56 sovereigns could be recovered. Though the petitioner had lost 105 sovereigns of jewels, silver articles and cash of Rs.65,000/-, only 56 sovereigns could be recovered. Due to slumber of the police and passage of time, the other portion of the jewels, silver articles and cash could not be recovered.

13.From the confession of the accused, it is seen that jewels were utilized changed to various forms. In this case, the alleged occurrence took place in the year 2001. Ten years thereafter only in the year 2010, on the arrest of A1 and A2,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

56 sovereigns of jewels could be recovered. The lower Court dismissing the return of property petition in C.M.P.No.1581 of 2010, dated 23.04.2010 for the reason that the investigation pending and now charge sheet came to be filed, the lower Court dismissing Crl.M.P.No.11534 of 2020, by order dated 14.10.2020 is not proper. In this case, admittedly Crl.M.P.No.11534 of 2020 has been filed after filing of charge sheet in Crime No.673 of 2001, which is pending trial in C.C.No.369 of 2011. The lower Court giving reason that the ownership of the jewels could be decided only after examination of witnesses cannot be proper for the reason that on the materials available, it is seen that the jewels which have been burgled by the accused were pledged in Jawahar Neethi Limited and as such Jawahar Neethin Limited cannot have any claim over the stolen property. Admittedly, in this case, A1 and A2 no more and died on 23.10.2010 and 03.05.2015 respectively and their death certificates filed before the trial Court. As regards A3, she is also died and her death certificate is awaited from Tahsildar, Tambaram and admittedly, no recovery has been made from A3. In view of the same, the lower Court dismissing the claim of the petitioner to return the jewels is not proper. Further, all the accused in this case died and the continuation of trial in C.C.No.369 of 2011 is only a formality.

14.In view of the facts of the case and no doubt that the petitioner has lost 105 sovereigns of gold jewels and only 56 sovereigns of jewels are recovered from the burgled jewels and all the three accused died and following the guidelines issued in the Hon'ble Apex Court in the case "Sunderbhai Ambalal Desai Versus State of Gujarat reported in 2002 10 SCC 290", this Court is inclined to return 56 sovereigns of jewels to the petitioner.

15.Hence, the order dated 14.10.2020 made in Crl.M.P.No.11534 of 2020 passed by the learned V Metropolitan Magistrate, Egmore is set aside and the revision is, accordingly, allowed. The learned V Metropolitan Magistrate, Egmore is directed to hand over 56 sovereigns of jewels to the petitioner with the following conditions:-

(i) The petitioner shall execute a personal bond for a sum of Rs.10,00,000/-, (Rupees Ten Lakhs Only) before the learned V Metropolitan Magistrate, Egmore, Chennai.

(ii) The court below shall effect return of the property / jewels to the revision petitioner, after causing necessary photographs and panchanama. The panchanama shall be drawn by an

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

officer of the Court, in the presence of the Presiding Officer of the Court. The same to be taken in evidence.

(iii) The petitioner shall file an undertaking affidavit to the effect that the return of the Jewels is subject to the outcome of the trial.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Vv2

To

1.The V Metropolitan Magistrate Court,
Egmore, Chennai.

2.The Inspector of Police,
K-5, Peravallur Police Station,
Peravallur, Chennai-82.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.B.R.Shankaralingam, Advocate, S.R.No. 42541

Crl.R.C.No.1114 of 2020

AP(CO)
GN(05/02/2021)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/