



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.02.2020

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.856 of 2019

N.Kumaravel : Petitioner/Petitioner

Vs.

State through
Inspector of Police,
Tallakulam Police Station,
Madurai City.
(Crime No.1085 of 2018)

: Respondent/Complainant

Prayer: Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code against the order of the Judicial Magistrate No.II, Madurai, dated 12.04.2019 made in Crl.M.P.No.1064 of 2019.

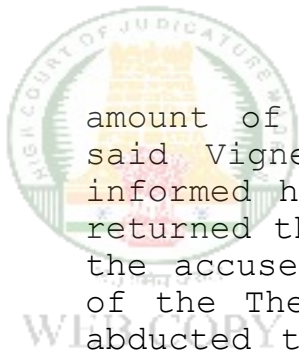
For Petitioner : Mr.M.Kannan

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor

O R D E R

This Criminal Revision is filed against the order passed by the Judicial Magistrate No.II, Madurai, in Crl.M.P.No.1064 of 2019, dated 12.04.2019

2.It is the case of the prosecution that one Vignesh and Ajith, who are the accused in connection with a case in Crime No.1085 of 2018 approached one Martin Mohanraj, who is the de-facto complainant, working as a Manager of Tamil Jeya Theatre, through one Selvaraj for purchasing First Show Bulk Cinema Tickets for sale on 07.06.2018 of "Kaala" Movie acted by Rajinikanth and gave Rs.3,80,000/- to the de-facto complainant on 02.06.2018. The de-facto complainant gave 530 ticket tokens and returned the balance



amount of Rs.1,16,000/- to the accused. On 06.06.2018, the above said Vignesh and Ajith approached the de-facto complainant and informed him that they could not sell the tickets and hence, they returned the tickets and demanded the balance amount and after that, the accused threatened the de-facto complainant and also the owner of the Theatre and used filthy language with dire consequence and abducted the said Selvaraj in order to threaten and get back the above said balance amount.

3.It is the further case of the prosecution that the petitioner is arrayed as A3 in Crime No.1085 of 2018 and at the time of arrest, the respondent police recovered a sum of Rs.4,50,000/- dummy currency notes using for Cinema Shoot and Rs.5,20,000/- currency and also Rs.70,000/- as cash from the driver of the petitioner. The respondent police produced the properties (amount) before the Judicial Magistrate No.II, Madurai, in RPR No.333 of 2018.

4.The petitioner/A3 filed petition under section 451 of Criminal Procedure Code in Cr.M.P.No.3045 of 2018 before the Judicial Magistrate No.II, Madurai, for return of the properties. The said petition was dismissed on 01.08.2018. Aggrieved over the same, the petitioner filed Crl.RC(MD)No.555 of 2018. The said criminal revision was disposed on 16.11.2018 on the ground that the investigation was pending. Thereafter, the respondent police had completed the investigation and filed a charge sheet in PRC No.80 of 2019 and in the charge sheet, the offence under section 498(B)(C) has been deleted and the charge sheet has been laid only for sections 147, 294(b), 323, 109, 364 and 506(I) IPC. Hence, the petitioner filed another petition in Cr.MP No.1064 of 2019 under section 451 of the Criminal Procedure Code before the Judicial Magistrate No.II, Madurai. The said petition was dismissed on 12.04.2019. Aggrieved over the same, the petitioner is before this court.

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

6.It is seen from the impugned order passed by the Judicial Magistrate No.II, Madurai stating that if the sum of Rs.5,90,000/- is returned to the petitioner, it will not be possible to produce the currency note by the petitioner at the time of trial and it will affect the trial.

7.The grievance of the petitioner is that the trial court can take the photographs of the currency and also note down the denomination and return the currency notes and the respondent police themselves deleted the offence of section 489(B)(C) IPC and hence, retaining of the actual currency notes in the court is not at all necessary for conducting the trial and he is ready to abide by any condition that may be imposed by this court.



8.At this juncture, it is relevant to refer the decision reported in **(2002)10 SCC 283 (Sunderbhai Ambalal Desai Vs. State of Gujarat)**, wherein the Hon'ble Apex Court held in para 7 as follows:-

7.In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1.owner of the article would not suffer because of its remaining unused or by its misappropriation:

2.Court or the police would not be required to keep the article in safe custody:

3.if the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail: and

4.this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tempering with the articles.

9.Keeping in view of the above facts and the decision cited supra, this court is of the considered view that the impugned order passed by the trial court is liable to be set aside.

10.In fine, this criminal revision is **allowed** and the order of the learned Judicial Magistrate No.II, Madurai, passed in Crl.M.P.No.1064 of 2019, dated 12.04.2019 is set aside. The learned Judicial Magistrate No.II, Madurai 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 seizure 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 No.II, Madurai, the trial court shall take photographs of currency and return the money to the petitioner.



(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.5,90,000/- with interest at 12% p.a within the time stipulated by the trial court.

WEB COPY

Sd/-
Assistant Registrar

/TRUE COPY/

/ /2020
Sub Assistant Registrar

To,

- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S.M.Kannan, Advocate SR.No. 5944

Order made in
CrI.R.C (MD) No.856 of 2019
12.02.2020

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JM/13.05.2020/4P/5C