



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.22031 of 2021

Venkadeswari

...Petitioner

Versus

The State Rep by
Inspector of Police,
Manali Police Station,
Chennai

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the Learned Judicial Magistrate, Thiruvottiyur to number the CMP.SR.No.8099 of 2021 filed on 20.07.2021 along with the necessary documents, pending investigation in Crime No.2453 of 2020 on the file of the respondent police, which is returned on 10.08.2021.

For Petitioner :Mr.V.Balu.

For Respondent :Mr.E.Raj Thilak,
Addl. Public Prosecutor

ORDER

The petitioner had filed a return of property petition under Sections 451 and 457 Cr.P.C before the learned Judicial Magistrate, Thiruvottiyur on 20.07.2021, which was returned by the Judicial Magistrate on 10.08.2021 with the following endorsement:

"It is submit that in above said Cr.No.2453/20 U/s 7, 20(1) COTPA Act in M6 Manali P.S. the property amount Rs.600,000/- the petition already returned on 26/07/2021 and the same petition is dismissed on 05.03.2021.

Hence how this petition is maintainable."

2. The contention of the petitioner is that the dismissal of petitioner's brother-in-law S.Chandrasekar's



petition in Crl.M.P.No.679 of 2021 is noway an obstruction or reason to return the petition of the petitioner. However the same has been returned, without considering on merits. The petitioner in support of his contention, had filed a typeset containing petition in Crl.M.P.No.679 of 2021, order of the learned Judicial Magistrate, Thiruvottiyur dated 05.03.2021, affidavit of the petitioner filed before the lower court and the impugned order dated 10.08.2021. The contention of the petitioner is that the case has been registered against the petitioner's brother-in-law Chandrasekar in Crime No.2453 of 2021 for the offences under Sections 7 and 20(i) of COTPA and 328 IPC. In that case, Rs.6,00,000/- in cash and 868 kgs of tobacco products were seized from the residence of Chandrasekar. The petitioner had mobilized a fund of Rs.6,40,000/- by closing her fixed deposit account in City Union Bank, Manali on 23.11.2021 for a sum of Rs.2,50,000/- and pledged jewels availing Rs.3,00,000/- on 01.12.2021. In addition, she had pledged her sister's jewels with the same City Union Bank, Manali on 01.12.2021. In total, the petitioners have paid Rs.6,50,000/- cash in hand and out of which Rs.6,00,000/- was handed over to her sister Karpagavalli, to find out a residence for the petitioner on lease.

3. Admittedly in this case, the cash and tobacco products were seized from the petitioner's sisters house at No.27, Srinivasa Perumal Koil Street, Periyathoppu, Manali, Chennai. The petitioner has got sufficient proof to prove that she got Rs.6,00,000/- and handed over the same to her sister. The lower court, has not considered these aspects, but considered only the earlier dismissal of petitioner's brother-in-law petition who is accused in Crime No.2453 of 2020, which is not proper.

4. The learned Additional Public Prosecutor submitted that the petitioner has to file appropriate petition before the lower court and on notice the objections of the prosecution would be filed.

5. Considering the submissions and on perusal of the materials, it is seen that the lower Court returned the petition as not maintainable, by order dated 10.08.2021, which is is not proper. Further, it is seen that there are two claimants for the sum of Rs.6,00,000/-, one Chandrasekar who had made a claim in CMP.No.679 of 2021 and now the petitioner had made a claim. In view of the same, the petitioner has to file a fresh petition seeking return of property for a sum of Rs.6,00,000/- by impleading Chandrasekar as 2nd respondent along with Inspector of Police, Manali as 1st respondent under Sections 451 and 457



Cr.P.C. Thereafter the lower Court shall entertain the petition by issuing notice to the respondents and dispose of the petition on merits and in accordance with law.

6. In view of the same, this Criminal Original Petition is disposed of.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Learned Judicial Magistrate
Thiruvottiyur

2. The Inspector of Police,
Manali Police Station,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

4. The Chief Judicial Magistrate
Egmore, Chennai

+1 CC to Mr.V. Balu, Advocate sr 62761.

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SPD(CO)
SP(17/12/2021)