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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.844 of 2021

M.S.Murugesan
S/o, S.Sivagnanam

... Petitioner/Petitioner

Versus

The State Rep by its
The Inspector of Police,
District Crime Branch, (DCB),
Coimbatore.

... Respondent/Respondent

PRAYER: Criminal Revision Petition filed under Section 397 & 401 of the Code of Criminal Procedure, to set aside the order dated 26.02.2021 passed in C.M.P.No.985 of 2020 on the file of the District Munsif cum Judicial Magistrate Court at Madukkarai and direct the respondent to return the articles as listed in the petition dated 05.12.2020 to the petitioner.

For Petitioner : Mr.K.Myilsamy

For Respondent : Mr.S.Sugendran
Government Advocate (Criminal Side)

ORDER

This Criminal Revision Petition has been filed against the order of dismissal dated 26.02.2021 passed in the petition in C.M.P.No.985 of 2020 filed for return of property, on the file of the District Munsif cum Judicial Magistrate Court at Madukkarai.

2. Learned counsel for the petitioner would submit that the petitioner is the employee of M/s.Sindhu Building Equipment Limited, Chettipalayam Coimbatore. The company is engaged in the business of leasing and selling building and construction materials. Two of the employees of the company namely one Subash Chandrabose and Sudhakar committed fraudulent activities and they have committed misfeasance and mis-appropriation, cheated the company to the tune of Rs.60 lakhs by disposing the property belonging to the company and collecting hire charges without the knowledge of the company. On the complaint given by the petitioner in respect of the



offence committed by the accused, case in Crime No.6 of 2020 was registered by the District Crime Branch, Coimbatore, During the course of investigation, the respondent has seized the properties belonging to the company. These properties are construction equipments and those are now in the custody of the court. The properties (14 in numbers) which are described in the schedule are construction equipments. Due to the pendency of the case, the petitioners are unable to use them either for construction purpose or lease the same to the third parties. The petitioners had filed CrI.M.P.No.985 of 2020 before the learned Magistrate seeking for return of property. The respondent also gave no objection to release the properties. However, the trial court on wrong appreciation holding that the proof of ownership of the properties can be decided only after receiving the report from the lab had dismissed the petition.

3. Learned counsel for the petitioner would further submit that item Nos.13 and 14 have already been taken for sampling and in respect of some items, the seal of the petitioner's company is also available. The petitioner is prepared to give an undertaking that he will not dispose the remaining properties and that the properties will be produced either before the respondent for investigation or before the court for the purpose of trial and he also prepared to produce adequate security for grant of interim custody of the properties to him.

4. Mr.S.Sugendran, learned Government Advocate (Criminal Side) appearing for the respondent would submit that on the complaint given by the petitioner, case in Crime No.6 of 2020 was registered by the respondent and the properties were recovered during the course of investigation. He would further submit that the preliminary investigation reveals that the properties belong to the defacto complainant's company. The learned Magistrate finding that the investigation is pending and the ownership can be decided only after the receipt of the report from the lab, had dismissed the same.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials on record.

6. On the complaint given by the petitioner, a case has been registered and it is admitted by the prosecution that the properties belong to the defacto complainant. This Court is of the opinion that interim custody of the properties can be handed over to the petitioner.

7. Accordingly, the Criminal Revision Case is allowed by setting aside the order dated 26.02.2021 passed in C.M.P.No.985 of 2020 on the file of the District Munsif cum Judicial Magistrate Court at Madukkarai. The petitioner is entitled to have interim custody of the item Nos.1 to 12 on



executing a bond for Rs.15,000/- with two sureties each for a like sum to the satisfaction of the District Munsif cum Judicial Magistrate Court at Madukkarai. The petitioner shall file an affidavit of undertaking that he will not dispose the properties and that he will produce the same either before the respondent for the purpose of investigation or before the Court during trial. The photographs of the articles ordered to be returned shall be taken and the photographs shall be retained in the case bundle. With the above observations, the Criminal Revision Case stands allowed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The District Munsif cum Judicial Magistrate,
District Munsif cum Judicial Magistrate Court,
Madukkarai.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The Inspector of Police,
District Crime Branch, (DCB),
Coimbatore.
4. The Public Prosecutor,
High Court,
Madras.
5. The Section Officer,
Criminal Section,
High Court, Madras.
6. The Deputy Registrar,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.K.Myilsamy, Advocate SR.No.63946

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PVS (CO)
GMY(10/12/2021)