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Crl.R.C.(MD) No.755 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.755 of 2021

Ayyappan ... Petitioner/Petitioner/Owner of the property

Vs.

State through
The Inspector of Police,
Pazhavur Police Station,
Tirunelveli District,
(in Crime No.139/2019). ...Respondent/Respondent/Complainant

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order passed in Crl.M.P.No.1410 of 2021 dated 23.09.2021 passed by the learned Judicial Magistrate, Valliyoor, Tirunelveli District and set aside the same and modify the onerous conditions.

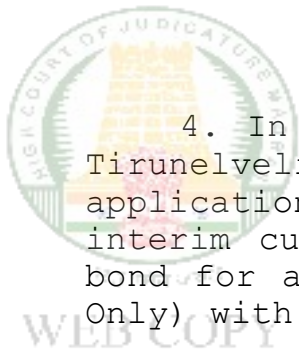
For Petitioner : Mr.G.Kalidoss
For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

O R D E R

The present Criminal Revision Case has been filed to call for the records pertaining to the order passed in Crl.M.P.No.1410 of 2021, dated 23.09.2021, on the file of the learned Judicial Magistrate, Valliyoor, Tirunelveli District and to modify the same.

2. The petitioner Ayyappan is the defacto complainant in Crime No.139 of 2019 on the file of the respondent police. The said case has been registered for the offences punishable under Sections 454 and 380 IPC alleging that the property weighing about 21 ½ sovereigns and Rs.13,000/- were stolen away.

3. During the time of investigation, the respondent police after arresting the accused, recovered the stolen property in the form of gold ingots weighing about 77 grams. After made recovery as above, the said property has been produced before the jurisdictional Court and thereafter, the same is in the custody of the Court. In the said circumstances, the petitioner being the defacto complainant / owner of the stolen property, filed a petition before the learned Judicial Magistrate, Valliyoor, Tirunelveli District, under Section 451 and 457 Cr.P.C., wherein, he praying to return the petition mentioned ingots to him for interim custody.



4. In this regard, the learned Judicial Magistrate, Valliyoor, Tirunelveli District, by order dated 23.09.2021 allowing the application for handing over the said property to the petitioner for interim custody on condition that the petitioner has to execute a bond for a sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only) with one surety.

5. Dissatisfying with the said order, the petitioner is before this Court for modifying the said condition.

6. Heard Mr.G.Kalidoss, learned counsel appearing for the petitioner and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the respondent/State.

7. The learned counsel appearing for the petitioner would submit that the petitioner is the owner in respect to the property now recovered by the respondent police and therefore, it is not necessary for him to execute a bond for Rs.7,50,000/- at the time when the same is handed over to him for interim custody.

8. In this regard, the learned Additional Public Prosecutor appearing for the respondent police fairly conceded that the petitioner is the owner of the property. Apart from that, in the impugned order passed by the Judicial Magistrate, Valliyoor, in paragraph No.5 had mentioned as the petitioner is the owner of the property. Therefore, on considering the facts and circumstances of the case, for the return of property worth about Rs.3,00,000/- directing the petitioner to execute a bond for Rs.7,50,000/- is nothing but onerous one. Apart from that, if the property is in the custody of Court, the same has not at all been used for any purpose. Therefore, I am of the opinion that the first condition imposed by the learned Judicial Magistrate, Valliyoor has to be necessarily modified as follows:-

"1. The police shall take photograph of gold ingots and give one print to the court and keep other print in the Case Diary file.

2.The petitioner shall furnish a bond for Rs.3,00,000/- (Rupees Three Lakhs only) with two sureties for likesum to the satisfaction of the learned Magistrate.

3. The petitioner shall not in any way alienate the case property without obtaining order from the learned Magistrate.

4. The petitioner shall produce the same before the trial court as and when called upon.



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9. Accordingly, this Criminal Revision Case is disposed of with above modification.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

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To:-

- 1.The Judicial Magistrate,
Valliyoor, Tirunelveli District.
2. The Inspector of Police,
Pazhavur Police Station,
Tirunelveli District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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27.10.2021

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