



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.22382 of 2021

Trichy Cold Storage (P) Ltd.,
Rep.by its Manager,
T.Thilagarajan

... Petitioner

Vs.

1. The Superintendent of Police,
Trichy District, Trichy.

2. The Inspector of Police,
Thuvakudi police station,
Thuvakudi, Trichy District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus directing the respondents to pay the arrears rent and to pay the cleaning charges totally to the tune of Rs.3,00,000/- and to get back their articles within a time frame that may be fixed by this Court.

For Petitioner : Mr.A.Azhageson
For Respondents : Mr.A.Albert James,
Government Advocate (crl.side)

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government counsel appearing for the respondents.

2.The Inspector of Police, Thuvakudi Police Station received information that within his jurisdictional limits dates were being sold by fraudulently passing them off as "Original Kimia Dates". The fruits were sold in individual packets which had fake wrappers. Crime No.208 of 2018 was registered for the offences under Sections 63(a) and 65 of the Copy Right Act, 1957. The contraband were seized. There were totally 500 cartons each containing 12 packets of dates. The seizure was duly reported to the Judicial Magistrate No.VI, Tiruchirappalli.

3.The jurisdictional magistrate vide order dated 31.10.2018 directed the second respondent herein to keep the seized items in a cold storage facility in view of their perishable nature till the disposal of the case. Thereupon, the second respondent approached the petitioner herein and entrusted the goods.

4.The petitioner is keeping the goods ever since. **Unfortunately, the case went into cold storage.** Weeks and months rolled by.. A full three years elapsed. What should have been a routine business engagement turned out to be a fatal "date" with the



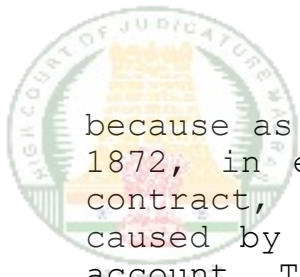
dates. Even the best of facilities cannot halt decay of the stored material beyond a point. The foul odour and stink made the situation unbearable. The police also did not oblige the petitioner.

5.The petitioner hoped to earn a tidy sum of Rs.7,500/- per month towards rental charges. But not a pie was paid. The bill kept mounting. As of now, the aggregated amount comes to Rs.3,54,000/-. The local police cannot be expected to cough up the amount as they had acted only in compliance of the order of the court. The complainant also cannot be asked to bear the charges because he was not responsible for this arrangement in the first place. The case is yet to be charge-sheeted and the guilt of the accused has not been determined. In any event, they cannot be made to bear the consequences flowing from the order of the court. Though as per Section 170 of Indian Contract Act, 1872, the petitioner as bailee has the right of lien over the bailed goods till the charges are paid, he is in an unenviable position of being unable to exercise the said right. This is one classic instance where exercise of statutory right would further worsen the condition of the right-holder. The petitioner obviously could not have acted on his own because of the operation of the court order.

6.The question that incidentally arises for consideration is whether the jurisdictional magistrate was justified in passing the order dated 31.10.2018. The answer can only be in the negative. Section 459 of Cr.PC authorizes the magistrate to direct sale of seized properties that are subject to speedy and natural decay. Fruits obviously come under the said category. The prosecution would not in any way be weakened by the disposal of the goods. The fake labels and wrappers are sufficient to establish the case against the accused. In any event, directing the police to keep the goods in safe custody till the disposal of the case was erroneous in the extreme.

7.What has happened has happened. There is no point in crying over spilt milk or spoilt dates. Quoting the legal maxim that act of court harms none (*actus curiae neminem gravabit*) would only be rubbing salt over the petitioner's wounds. Section 483 of Cr.PC states that every High Court shall so exercise its superintendence over the courts of judicial magistrate subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such magistrates. Power is coupled with duty. When it comes to the knowledge of this Court that there has been an improper disposal of a case, it is incumbent on this Court to intervene. That is why, though this writ petition came up for admission only on 17.12.2021, it was taken up for final disposal within a week.

8.The first question that has to be decided is the quantum of damages payable to the petitioner. His bill has mounted to Rs.3,54,000/-. But he is not entitled to full payment. This is



because as per Explanation to Section 73 of the Indian Contract Act, 1872, in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account. This is known as rule of mitigation. The petitioner had the duty of taking all reasonable steps to mitigate the loss. He had not done so. He could have moved the jurisdictional magistrate or this Court at the earliest. Therefore, the petitioner shall be paid only a sum of Rs.1,00,000/- instead of Rs.3,54,000/-. The cost of removal of the decayed goods and subsequent sanitation of the cold storage facilities is quantified as Rs.25,000/-. The first respondent shall co-ordinate with the petitioner and ensure that the stored goods are removed within a few days from the date of receipt of copy of this order. The petitioner shall be paid a sum of Rs.1,25,000/- from out of the victim compensation fund by the jurisdictional magistrate court within a period of four weeks. The writ petition is allowed accordingly.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Judicial Magistrate No.VI, Tiruchirapalli.
 - 2.The Superintendent of Police, Trichy District, Trichy.
 3. The Inspector of Police,
Thuvakudi police station, Thuvakudi, Trichy District.
 4. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai
- +1 CC to M/s.A.AZHAGESON, Advocate (SR-40032[F] dated 22/12/2021)

W.P. (MD)No.22382 of 2021

22.12.2021

MGJ(23.12.2021) 3P 6C

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