



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WEB COPY

Cr1.RC(MD)No.939 of 2021

Punitha Ganesan

: Petitioner/Petitioner

Vs.

The State,
Rep. by the Sub Inspector of Police,
Kallikudi Police Station,
Madurai District.
(Crime No.1535 of 2020)

: Respondent/Complainant

Prayer: Criminal Revision is filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the learned Judicial Magistrate, Thirumangalam, in Cr.M.P No.4365 of 2021, dated 24.11.2021 and set aside the same.

For Petitioners : Mr.S.Mahendrapathy

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Cr1. Side)**ORDER**

This criminal revision is filed against the order passed by the learned Judicial Magistrate, Thirumangalam in Cr1.M.P No.4365 of 2021, by which the petitioner seeking interim custody of the amount viz., Rs.16,00,000/- which were recovered from him. That petition came to be dismissed on 24/11/2021.

2.The case has been registered for the offences under sections 406 and 420 IPC @ 395 and 402 IPC. During the course of investigation, the alleged amount has been recovered as stated above and remanded in RPR No.183 of 2021. The petitioner being the owner of the above said amount, filed the above said petition. Even though the ownership of the currency and the amount has not been disputed by the prosecution, the only objection that has been raised was that the balance amount got to be recovered and if the money is returned to the petitioner, there is every possibility of spending the same by him, which may hamper the trial process. So challenging the above said order, this criminal revision has been filed mainly on the ground that the money cannot be kept pending with the custody of the trial court till the trial process is over.



3. In similar situation, the Hon'ble Supreme Court in the case of **C.M. Mudalir Vs. State of Gujarat [2002(10) SCC 283]** has observed like this:-

"Valuable articles and currency notes Valuable articles such as golden or silver ornaments or articles studded with precious stones, need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

(1) preparing detailed proper panchnama of such articles; (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and (3) after taking proper security.

For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstance the investigating officer should keep such articles in custody for a longer period



for the purposes of investigation and identification. For currency notes, similar procedure can be followed."

4. Following the above said judgment, this court in the case of R. Badrinarayanan Vs. State (Crl.RC(MD)No.154 of 2015, dated 01.04.2015) followed the procedures like this:

(i) A Mahazar/note has to be prepared containing the denomination and currency numbers by the respondent and it shall be submitted to the Court of District Munsif -cum- Judicial Magistrate, Vadipatti.

(ii) The petitioner shall execute a personal bond for a sum of Rs.23,50,000/- (Rupees Twenty Three Lakhs and Fifty Thousand only) with one surety for the like sum to the satisfaction of the Court of District Munsif - cum- Judicial Magistrate, Vadipatti.

(iii) On compliance of the above said conditions, a cash of Rs.23,50,000/- (Rupees Twenty Three Lakhs and Fifty Thousand only) is ordered to be returned to the revision petitioner/defacto complainant by way of interim custody.

5. On this ground, the learned counsel appearing for the petitioner would submit that he is ready to abide by any condition that may be imposed by this court.

6. There is no dispute with regard to the ownership of the money. The trial court has not stated anything that there is a rival claim also. The money has been recovered from the accused persons on the basis of the confession statement. When there is no dispute with regard to the ownership of the money, the opinion of the trial court that if the money is returned to the petitioner, there is every likelihood of spending the money may not be proper. The money should not be kept pending till the trial process is over and should not be kept idle also.

7. The petitioner is running an educational institution. So money is very much required for his school and college administration. So for that purpose, I am of the considered view that by following the above said judgment, the following order can be passed:-

(i) The Mahazar has to be prepared on the basis of the Form 95 that has been produced by the Investigating Officer;



(ii) The above said Mahazar must be signed by the Investigating Officer and the concerned Court Official, who is responsible;

(iii) The Mahazar must be prepared in triplicate. One must be retained by the concerned court, another must be handed over to the Investigating Officer and the third one to the petitioner;

(iv) On completing the above process, the alleged amount shall be returned to the petitioner on executing a bond for a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs only) along with two sureties each for a like sum to the satisfaction of the Judicial Magistrate, Thirumangalam; and

(v) On execution of the above said bond, the learned Magistrate shall return the amount to the petitioner.

With the above said conditions, this criminal revision stands allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

er

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,
Thirumangalam.

2. The Sub Inspector of Police,
Kallikudi Police Station, Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.RC (MD) No.939 of 2021
16/12/2021