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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.191 of 2022

Chandar

... Petitioner/Defacto
Complainant

Vs

State Rep by the SHO,
D.C.B. P.S., Cuddalore,
Cr.No.25 of 2020
C.P.No.260 of 2020 and C.P.No.39 of 2021
U/s.419, 420 of IPC

... Respondent/ Complainant

PRAYER: This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., praying to call for the records and set aside the order dated 23.10.2021 passed in Crl.M.P.No.452 of 2021 in Cr.No.25 of 2020 on the file of the Judicial Magistrate No.II, Cuddalore and direct the respondent to return the seized cash, a sum of Rs.9,10,000/- and thus allow this Criminal Revision.

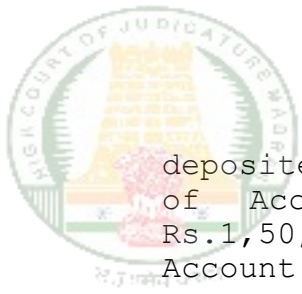
For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

O R D E R

Aggrieved over the order dated 23.10.2021 made in Crl.M.P.No.452 of 2021 passed by the learned Judicial Magistrate No.II, Cuddalore, the petitioner, who is the defacto complainant in Crime No.25 of 2020 on the file of the D.C.B. Police Station, Cuddalore has preferred this Criminal Revision, wherein, he prayed to return the cash i.e. a sum of Rs.9,10,000/-, which was recovered in the above crime number.

2. The case of the prosecution is that the petitioner runs a pawn shop. The accused, Janagiraman sought money under the pretext that his jewels were pledged with the ICICI Bank and the jewels can be kept by the petitioner till repayment is done by the accused. The value of the jewels were more than the amount sought for by the accused. Accordingly, induced by the accused, the petitioner on 06.11.2020 personally visited and



deposited Rs.18,00,000/- in OT ICICI Bank, Cuddalore in favour of Account No.269901505346 and the remaining amount of Rs.1,50,000/- in HDFC, Vallivilas Hospital Branch in favour of Account No.50100377622608 on the same day. After depositing the money, the petitioner and the accused went to eat nearby from where the accused escaped without handing over the jewels as promised to the petitioner. Immediately upon the complaint given by the petitioner herein, the respondent police registered the above case in Crime No.25 of 2020 against the accused.

3. The learned counsel for the petitioner would contend that after recovering a cash i.e. a sum of Rs.9,10,000/- from the accused, the respondent police handed over the same before the learned Judicial Magistrate No.II, Cuddalore as case property and the same was received by the Judicial Magistrate in C.P.No.260 of 2020 and C.P.No.39 of 2021. Later, the petitioner filed a petition in CrI.M.P.No.452 of 2021 under Section 451 of Cr.P.C., wherein, he prayed to hand over the said cash for interim custody. The learned Judicial Magistrate No.II, Cuddalore after observing that if these properties are returned to the petitioner for interim custody, it would affect the trial and it would cause hurdle in marking the recovered amount as material object and ultimately dismissed the petition. Hence, the petitioner is before this Court with this Criminal Revision Petition.

4. The learned Government Advocate appearing for the respondent police fairly admits that the property now in the hands of the Judicial Magistrate No.II, Cuddalore is belongs to the petitioner and he is the absolute owner to the said property.

5. The submissions made by the learned counsel appearing on either side are considered.

6. Though it was contended on the side of prosecution that if the property is returned to the petitioner for interim custody, it could create a hurdle during the time of trial, being the reason that the money is for circulation, it cannot be kept in a custody. In this regard, in the judgment rendered by the Hon'ble Apex Court reported in (2002) 10 SCC 283, it was held as follows:

"12. 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



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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.

13. For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. 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 Cr.P.C. to impose any other appropriate condition."

7. Now applying the principle set out in the above referred judgment with the case on hand, this Court is inclined to direct the Judicial Magistrate No.II, Cuddalore, to return the cash i.e. a sum of Rs.9,10,000/-, which was seized from the accused in Crime No.25 of 2020 to the petitioner on condition that by taking photographs (i.e. Xerox) the denomination of the currency notes shall be noted and signed by the petitioner and the Investigating Officer, later the same be attested by the Judicial Magistrate No.II, Cuddalore. Thereafter, the amount shall be handed over to the petitioner. Further, a personal bond for a sum of Rs.9,10,000/-, to be obtained from the petitioner with an undertaking that the amount of Rs.9,10,000/- received is subject to the outcome of Crime No.25 of 2020.

8. In the result, the order dated 23.10.2021 made in CrI.M.P.No.452 of 2021 by the learned Judicial Magistrate No.II, Cuddalore is set aside and the Criminal Revision Petition is accordingly allowed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Cuddalore.
2. The Station House Officer,
D.C.B. Police Station,
Cuddalore.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.K.P.Anantha Krishna, Advocate, S.R.No.14696

Cr1.R.C.No.191 of 2022

GPL(CO)
CT 04/04/2022