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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.09.2022

Pronounced on : 17.10.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.272 of 2020

T.Balakrishnan

.. Petitioner

Versus

1.The Sub Inspector of Police
E-3 Police Station
Teynampet
Chennai – 600 006

2.A.Sivasankaran

.. Respondents

PRAYER: Criminal Revision Case filed under Section 397 r/w 401(2) of Cr.P.C, may be pleased to set aside the above judgment dated 22.08.2019 made in Criminal Appeal Number 328/18 passed by the XVIII Additional Sessions Judge, Chennai, confirming property order passed in C.C.No.4454/14 by the 18th Metropolitan Magistrate Court, Saidapet, Chennai on 19.10.2016.

For Petitioner : Mr.S.Kasirajan

For Respondents : Mr.S.Sugendran

Additional Public Prosecutor

No appearance for R2

ORDER

This petition has been filed seeking to set aside the judgment dated 22.08.2019 made in Criminal Appeal Number 328/18 passed by the XVIII



Additional Sessions Judge, Chennai, confirming property order passed in C.C.No.4454/14 by the 18th Metropolitan Magistrate Court, Saidapet, Chennai on 19.10.2016.

2. The first respondent police based on the complaint of the second respondent herein registered a case as against the petitioner in Crime No.1206 of 2014 for the offences under Sections 381 r/w 34 of IPC on 03.06.2014. After investigation, they laid down the Chargesheet before the XVIII Metropolitan Magistrate, Saidapet. The learned Magistrate took the charge-sheet on file in C.C.No.4454/2014. After the Trial, the petitioner was acquitted from the charges. However, he passed the property order ordering that a sum of Rs.50 lakhs already deposited before the Court be retained by the second respondent/defacto complainant subject to the production of documents.

3. Though the interim custody was given to the second respondent/defacto complainant herein, in the Judgment, the learned Magistrate ordered to retain the amount of Rs.50 lakhs already returned to the defacto complainant on execution of bond and keep the interim custody till



the time of disposal of appeal, any filed. Since, the petitioner was acquitted from the criminal case and aggrieved by the property order alone, the petitioner, subsequently, filed Crl.M.P.No.1179 of 2018 to condone the delay of 414 days in filing the appeal before the Sessions Court at Chennai and the said Miscellaneous Petition was allowed and subsequently, the appeal was taken on file in Crl.A.No.328 of 2018 by the learned XVIII Additional Sessions Judge, Chennai and after hearing the arguments, the learned XVIII Additional Sessions Judge, Chennai dismissed the appeal confirming the order of the learned Magistrate. Now, the accused has filed this revision case before this Court.

4. The learned counsel for the revision petitioner would submit that the case was registered as against the petitioner herein and two others in Crime No.1206 of 2014 for the offences under Sections 381 r/w 34 of IPC. Though the learned Magistrate disbelieved the case of the prosecution and acquitted the said persons from the charges. However, in the property order, the learned Magistrate directed that the second respondent/defacto complainant can retain the money which is already deposited before this Court subject to the production of the original documents from the petitioner. Since, the petitioner



was acquitted from the charges, he had only filed appeal with regard to the property order alone.

5. Further, he submitted that once the criminal charges are acquitted on the ground that the prosecution has not proved the commission of offences with the material objects, the money recovered from the petitioner/accused has to be returned. Therefore, in this case, even though the Trial Court acquitted the petitioner and 2 others, but, contrarily passed the property order on retaining the recovered property. He would further submit that though the property is recovered during the investigation from the petitioner, the second respondent was allowed to keep the custody of the recovered money till the disposal of the appeal subject to production of original document from the petitioner is against law and non est in eye of law. Though, when the petitioner approached the Appellate Court, the Appellate Court failed to consider and simply endorsed the view of the learned Magistrate without any iota of evidence. Therefore, this revision is to be allowed and the judgement passed by the Appellate Court is liable to be set aside.



6. The learned Additional Public Prosecutor appearing for the respondent police submitted that the property recovered during the investigation was produced before the Court. The second respondent filed an application for return of property and the same was returned in Crl.M.P.No.1615/2014. The Trial Court, on appreciation of the evidences acquitted the petitioner from the charges, since, the prosecution failed to establish the commission of offences and since the ownership of the recovered property was not decided, the learned Magistrate passed the property order, directing that the second respondent himself can retain the recovered money till deciding the title having ownership of the recovered property. Though, on appeal, the Appellate Court also stated that the petitioner has not proved that he is the owner of the money and therefore, submitted that there is no merit in this case.

7. Further, submitted that since the ownership is not proved with regard to recovered money in the Trial Court by the prosecution, the Trial Court acquitting the petitioner and two others and further passing the property order allowing the second respondent to keep the custody of the recovered money till the disposal of the appeal subject to production of



original document from the petitioner has no perversity and further, on appeal, the Appellate Court affirmed the order of the learned Magistrate. Hence, submitted that the said orders does not require interference from this Court and seeks for dismissal of this revision case.

8. Heard both sides and perused the materials placed on record. The case of the prosecution is that on 03.06.2014 at about 12.00 hours, while the accused had been working as Assistant Manger under the second respondent/defacto complainant company stolen the bank locker key kept by the complainant in his table drawer accompanied by A2 and A3 gone to Karnataka Bank with the common intention to steal a sum of Rs.50 lakhs from the locker and had stolen the said sum of Rs. 50 lakhs and committed the above offences. Hence, complaint was preferred before the first respondent police and subsequently, the charge sheet was laid before the learned Magistrate.

9. After Trial, since, the prosecution failed to prove the commission of offence that the petitioner and two others stolen the key and took the money from the locker . Therefore, benefit of doubt was extended to the petitioner



and two other, hence, acquitted them. Though the interim custody was given to the second respondent/defacto complainant herein, in the Judgment, the learned Magistrate ordered to retain the amount of Rs.50 lakhs already returned to the defacto complainant on execution of bond and keep the interim custody with the second respondent/defacto complainant till the disposal of appeal.

10. Subsequently, since the petitioner was acquitted from the criminal case and aggrieved by the property order alone filed the appeal before the Sessions Judge, Chennai and the appeal was taken on file in CrI.A.No.328 of 2018 by the learned XVIII Additional Sessions Judge, Chennai. Since, the challenge is only as against the property order, the learned XVIII Additional Sessions Judge, Chennai observed that the petitioner has not substantiated the claim with regard to the ownership over the recovered property and dismissed the appeal confirming the order of the learned Magistrate.

11. This Court finds that since the petitioner has not proved his case that the recovered money belong to him and has not produced any documents substantiating his claim of ownership over the recovered amount. Hence, this



Court is of the considered view that there is no perversity or illegality in the orders of both the judgments dated 22.08.2019 made in Criminal Appeal Number 328/18 passed by the XVIII Additional Sessions Judge, Chennai, confirming property order passed in C.C.No.4454/14 by the 18th Metropolitan Magistrate Court, Saidapet, Chennai on 19.10.2016.

12. With the above discussion, this criminal revision case stands dismissed. No costs. However, liberty is granted to the petitioner to approach competent Civil Court to work out the remedy in the manner known to law.

17.10.2022

Index : Yes/No
Speaking order/non speaking order
dhk

To

1.The XVIII Additional Sessions Judge
Chennai

2.The XVIII Metropolitan Magistrate Court
Saidapet



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P.VELMURUGAN, J.,

dhk

3.The Sub Inspector of Police
E-3 Police Station
Teynampet
Chennai – 600 006

4.The Public Prosecutor
High Court, Chennai

Pre-Delivery Judgment in
Crl.R.C.No.272 of 2020

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