



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

Crl.R.C. (MD) .No.545 of 2021

Amul Raj

... Petitioner/Petitioner

/Vs./

1.The State Rep. by
The Inspector of Police,
Thuckalay Police Station,
Kanniyakumari District.

... Respondent/Respondent

2.Babi

3.Raja @ Mayil Vahanan

... Respondents

(Respondent Nos.2 and 3 were impleaded as per order dated 02.12.2021 in Crl.R.C. (MD) .No.545 of 2021)

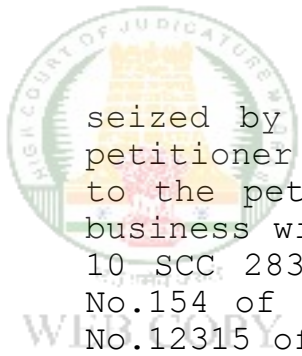
PRAYER: This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records in connection with the order dated 07.05.2021 made in C.M.P.No.4681 of 2021 on the file of the Judicial Magistrate No.I, Padmanabhapuram, Kanniyakumari District and set aside the same and to direct the respondent police to return the petitioner's recovered cash money of Rs.9,50,000/- in Crime No.212 of 2021 on the file of the Inspector of Police, Thuckalay, Kanniyakumari District.

For Petitioner	: Mr.T.Cibi Chakraborty, Advocate
For Respondents	: Mr.K.Sanjay Gandhi, for R1 Government Advocate (Crl. Side)

O R D E R

The petitioner is the complainant in Crime No.212 of 2021 on the file of the respondent. A sum of Rs.9,50,000/- (Rupees Nine Lakhs and Fifty Thousand only) was recovered by the respondent. The petitioner claiming himself as the owner of the amount filed the petition in Cr.M.P.No.4681 of 2021. The petition was dismissed by the learned Judicial Magistrate, Padmanabhapuram. Against that order the petitioner has filed this Criminal Revision Petition.

2.On the side of the revision petitioner it is stated that the petitioner is a whole sale vegetable merchant and two persons in the guise of retailers committed theft of Rs.16,63,300/- (Rupees Sixteen Lakhs Sixty Three Thousand and Three hundred only) from the petitioner. The petitioner lodged a complaint on the same day. A sum of Rs.9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) was



seized by the respondent police. This amount is required for the petitioner to carryout his business. If the amount is not returned to the petitioner, his entire life will be spoiled and his entire business will be affected. A Judgment of the Supreme Court in (2002) 10 SCC 283 is cited. Judgment of this Court made in Crl.R.C.(MD). No.154 of 2015, 620 of 2015, 211 of 2018 and an order in W.P.(MD). No.12315 of 2021 are cited on the side of the petitioner.

3.The relevant portion in Para 5 of the Judgment made in ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283*** are as follows:

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 Cr.P.C. 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."

4.The relevant portion of the Order passed in Crl.R.C.(MD). No.154 of 2015 is as follows:

"8.As rightly pointed out by the learned counsel appearing for the petitioner, it is not in serious dispute that the stolen cash belongs to him and in the light of the above said pronouncement, there cannot be any difficulty in returning the said amount by way of interim custody."

5.The relevant portion of the Order passed in Crl.R.C.(MD). No.620 of 2015 are as follows:

"7.In view of the same, the condition Nos.(ii) and (iv) imposed by the Court below is modified and the petitioner is directed to take one more photograph copy depicting the currency notes and also submit a CD copy of the same before the Court below. On complying with the aforesaid condition, the Court below is directed to return the cash, viz., a sum of Rs.3,85,000/- seized from the accused persons, to the petitioner. The photographs and CDs so submitted by the petitioner shall be treated as a secondary evidence.



6.The relevant portion of the Order passed in Crl.R.C.(MD). No.211 of 2018 are as follows:

"In view of such state of affairs, the affected and aggrieved person have been put into great hardship and irreparable loss in a case of theft of god jewellery or valuable articles and cash and the victims, viz., the complainants, having already suffered mental torture and agony have also put into great hardship and irreparable loss on the ground of delay and rejection of the petition filed under Section 451 of Cr.P.C. for return of their articles and cash in spite of the admitted fact that they are the owners of the properties."

7.The relevant portion of the Order passed in W.P.(MD). No.12315 of 2021 are as follows:

"The amount of Rs.14,95,906/- to be paid to the petitioner, the petitioner and her husband to file a joint affidavit and an undertaking and also execute a bond for such an amount, that amount of return of Rs.14,95,906/- is subject to the outcome of the trial."

8.On the side of prosecution it is stated that out of the total amount of Rs.16,63,300/- (Sixteen Lakhs Sixty Three Thousand and Three Hundred only), the police party has recovered only Rs.9,50,000/- (Rupees Nine Lakhs and Fifty Thousand only). The rest of the amount has to be recovered. The charge sheet was filed, but not taken on file. If the amount is returned to the petitioner, the identity of the currency notes cannot be proved at the time of trial and prayed the petition be dismissed.

9.The petitioner is the defacto complainant in this case. Though notice was served on the accused, none appeared for the accused/respondents 2 & 3. Out of Rs.16,63,300/- (Rupees Sixteen Lakhs Sixty Three Thousand and Three hundred only) only Rs.9,50,000/- (Rupees Nine Lakhs Fifty Thousand only) was seized by the respondent police.

10.Considering the above facts and circumstances of the case and also the fact that the amount is need for the business of the petitioner herein, the order passed by the learned Judicial Magistrate No.I, Padmanabapuram, in C.M.P.No.4681 of 2021, dated 07.05.2021 is set aside. The revision petitioner is granted interim custody of the cash on the following terms.

(i) The petitioner is directed to execute a bond for a sum of Rs.15,00,000/- (Rupees Fifteen Lakhs only) before the learned Judicial Magistrate No.I, Padmanabapuram with two sureties for a like sum each.



(ii)The seized items should be photographed at the cost of the petitioner herein and a list is to be prepared and the same is to be signed by the petitioner.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.I,
Padmanabhapuram.
- 2.Do Through The Chief Judicial Magistrate,
Kanniyakumari District at Nagercoil.
- 3.The Inspector of Police,
Thuckalay Police Station,
Kanniyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-4309[F] dated 04/02/2022)

**Crl.R.C. (MD) .No.545 of 2021
04.02.2022**

RS (18.02.2022) 4P-6C