BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/12/2022

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.RC(MD)No.1028 of 2022

Narayanan : Petitioner/Petitioner/ De-facto complainant

Vs.

The State represented by
The Sub Inspector of Police,
Thenkarai,
Theni District.
(In Crime No.355 of 2022) : Respondent/Respondent/ Complainant

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the order, dated 07/10/2022 made in Cr.M.P No.2025 of 2022 on the file of the Judicial Magistrate, Periyakulam and set aside the same as illegal.

For Petitioner : Mr.R.Gandhi

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

For Impleading Respondent : Mr.R.Shankar Ganesh

O R D E R

This Criminal Revision has been filed seeking in order to set aside the order, dated 07/10/2022 made in Cr.M.P No.2025 of 2022 on the file of the Judicial Magistrate, Periyakulam.

2.**The facts in brief**:-

The de-facto complainant lodged a complaint stating that he received Rs.50,00,000/- from one Anandhan for the purpose of maintenance and construction of a building on behalf of one Baskaran, who is the brother of Anandhan. At the time of receiving the above said money, the driver Sridharan was available. After receiving the above said money, they started their journey through a Car from Chennai towards Periyakulam. At that time, he received a call from a political party functionary and so along with the above said political functionary, the de-facto complainant was travelling in a separate Car, which was followed by the above said Sridharan in the Car. The Car following later, took diversion and escaped. On coming to know that later, he instructed the above said Sridharan to go to his house and wait till is arrival. Later, he found that the above said money was found missing. On that basis, the present complaint has been registered.

3.All the accused persons have been arrested and remanded to judicial custody and this petitioner as the de-facto complainant filed a petition under section 156(3) Cr.P.C before the trial court seeking return of the interim custody of the money, that was recovered and remitted.

4.The trial court, after elaborate consideration found that there is a dispute with regard to the ownership of the above said money. Because of that the accused also claimed that the money does not belong to the petitioner. On that basis, the wife of the second accused filed an intervening petitioner making objection. It has been stated by the intervenor that regarding the document that was produced by the petitioner is also doubted by the trial court. So the trial court ordered that since there is a dispute with regard to the ownership of the property, it must be deposited in a Nationalised Bank for fixed period till the conclusion of the trial process.

5.Reading of the trial court order shows that serious doubt has been entertained by the trial court with regard to the ownership as well as the document that has been submitted by the petitioner.

6.Now before this court, the accused is represented by a counsel, sought himself impleaded as the second respondent. He filed Crl.MP(MD)No.13825 of 2022. He was also heard. Now, he has made a new twist stating that the de-facto complainant is a political person and he is involved in transfer of money between the party people and he received the above said amount from a political party and to grab the above money only, all the accused persons have been made a scapegoat. According to him, he is doing real estate brokerage business. The above said money of Rs.35,50,200/- is for registration of sale deed, dated 27/10/2021. That amount must be paid to one Murugan. So according to him, the above said money was intended to be paid to the above said Murugan for a Real Estate business. So according to him, the above said money does not belong to the revision petitioner.

7.Perusal of the records also shows another development. When the accused persons moved bail application before the Principal District Judge, Theni, finding that some illegal transaction is involved, he ordered to send a copy of the order to the Directorate of Enforcement, Chennai for taking necessary action. Whether such an order is valid or not need not be taken into consideration at this stage. But the entire facts and circumstances of the case shows that even as per the case of the de-facto complainant, he is not the owner of the money. According to the de-facto complainant, he received money from one Anandhan for handing over to one Baskaran. So either Anandhan or Baskaran ought to have filed a petition for interim custody, but the de-facto complainant filed a petition, who is a Secretary of a political party and he is not the owner of the money. These things should be taken into consideration at this stage. To find out the real issue, even the Investigating Officer was directed to be present and he has stated that only Anandhan is the real owner of the money. So, who is the real owner and what was the real transaction is a matter for thorough investigation.

8.The learned counsel appearing for the revision petitioner would submit that absolutely this is only an interim custody issue and it is settled position of law that property, which has been stolen from the de-facto complainant must be handed over to him for interim custody. For that purpose, he would rely upon the order of this court passed in Crl.RC No.673 of 2018, dated 21/06/2018 (M.Karthikeyan Vs. Deputy Inspector of Cell Officer, Chennai Collectorate , Chennai and two others). He would submit that on the basis of the above said judgment, conditional order may be passed to give Bank security for the above said amount. It is also further submitted that if such sort of frivolous objection are allowed to be raised, then the true owner will be affected. Since money is involved, it must be returned to the de-facto complainant for the purpose of making circulation in the public. No purpose is going to be served in depositing the money in a Nationalised Bank as the owner is entitled to use the money for any purpose. So that should not be prevented by this court.

9.But from the facts narrated above, the real transaction must be found out. This is a premature stage to hand over the money to the revision petitioner. Even as per his own version, he is not the owner. So no loss will cause to anyone and it has be deposited in a Nationalised Bank so that it will also fetch interest. So at the conclusion of the investigation, the real transaction will come to light, apart from the real ownership.

10.In this context, the learned counsel appearing for the proposed second respondent would rely upon the judgment of the Hon'ble Supreme Court in the case of Bharat Sanchar Nigam Limited Vs. Suryanarayanan and another [(2020)12 SCC 637] to the effect that when there is serious doubt with regard to the ownership of the property, the parties must be relegated to the civil court for deciding the ownership.

11.But as mentioned earlier, contradictory statement has been given by the wife of the proposed 2nd respondent before the trial court. For that, he would submit that without proper instruction, the above said statement has been given by his wife during his custody in the prison and only after coming out of the prison, he came know the above said wrong statement. As mentioned earlier, all these things can be taken into account only during the course of trial and investigation. So, the matter can be disposed of with some liberty and direction. The petitioner can revive the petition after filing of the final report.

12.In the result, this criminal revision is **dismissed** of with the above said liberty.

02/12/2022

Index:Yes/No
Internet:Yes/No
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G.ILANGOVAN,J

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