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Crl.R.C.No.373 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.RC.NO.373 OF 2023

Ganesan

... Petitioner

Vs.

The State

Represented by Sub Inspector of Police

Thalaivasal Police Station

Crime No.435/2022

... Respondent

PRAYER: Criminal Revision filed under Section 397 read with 401 of Cr.P.C., to set aside the order dated 11.01.2023 passed in Crl.M.P.No.59 of 2023 by the learned Judicial Magistrate No.2, Attur.

For Petitioner : Mr.V.Raghavachari
Senior Counsel for Ms.V.Srimathi

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

Challenging the order dated 11.01.2023 passed in Crl.M.P.No.59 of 2023 by the learned Judicial Magistrate No.2, Attur, the present Criminal Revision Case has been filed by the petitioner.

2.The learned Senior Counsel for the petitioner submitted that in pursuance of the complaint given by the petitioner / defacto complainant, a case has been registered by the respondent police in Crime No.435 of 2022, for the offences punishable under Sections 403, 406 and 420 IPC, against the accused persons. During investigation, an amount of Rs.1,00,00,000/- (Rupees One Crore Only) was recovered from the accused, which is now in the custody of the Trial Court and the petitioner, being the owner of the amount is entitled to the custody of the said amount. Since the Trial Court dismissed the petition filed by the petitioner under Section 451 Cr.P.C., seeking interim custody of money recovered in connection with Crime No.435 of 2022, the petitioner is before this Court.



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3.The learned Government Advocate (Criminal Side)

submitted that the investigation has been completed and final report has been filed against the accused for the offences punishable under Sections 403, 406 and 420 IPC and there is no dispute that the petitioner is the owner of the money recovered. He further submitted that the fact of money recovered has already been informed to the Income Tax Department and they are proceeding the matter further with regard to levying of tax.

4.I have considered the submissions made on either side and

perused the entire materials available on record.

5.On a perusal of records, the fact reveals that on 10.12.2022

at about 06.00 hours, the defacto complainant, namely Tr.Ganesan, lodged a complaint before the respondent police by stating that he is residing in Manivizhundhan Anjal, Thalaivasal Taluk, Salem. His wife name is Tmt.Sivagami, one son by name Tr.Gopalakrishnan and one daughter by name Kowsalya. The petitioner has added cash of Rs.1,00,00,000/- for the purpose of buying land. The petitioner, on 19.11.2022, has given a sum of Rs.1,00,00,000/- to one Loganathan / accused, who is a friend of the



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petitioner's son for keeping the money in safe custody as there is no safety in his house. However, when the petitioner requested the accused to give back his money on 07.12.2022, the accused has stated that the money has been stolen by someone. Hence, he lodged a complaint before the respondent police. Based on the complaint, a case was registered in Crime No.435 of 2022 under Sections 403, 406 and 420 IPC by the respondent police against the accused. During the course of investigation, the respondent police arrested the accused on 10.12.2022 and seized the amount of Rs.1,00,00,000/- and obtained confession statement from him in the presence of witnesses namely Tr.Muthusamy and Tr.Suresh Kumar and then, he was produced before the learned Judicial Magistrate No.II, Attur, and remanded to judicial custody. After investigation, final report has been filed before the Trial Court and it is yet to be taken on file. Further, it is not disputed by the prosecution that the petitioner / complainant is the owner of the amount of Rs.1,00,00,000/- and therefore, the order of the Trial court is unsustainable and the same is liable to be set aside and the petitioner is entitled to get interim custody of the said amount.



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6. Accordingly, the Criminal Revision Case is allowed and the impugned order dated 11.01.2023 passed by the learned Judicial Magistrate No.2, Attur, in Crl.M.P.No.59 of 2023 is set aside on the following conditions;

- (i) the petitioner shall prove his ownership for the said amount by producing the relevant documents.
- (ii) The court shall prepare a detailed Panchnama of the amounts.
- (ii) the petitioner shall execute a bond for a sum of Rs.1,00,00,000/-(Rupees One Crore only) before the Judicial Magistrate No.2, Attur.
- (iv) the petitioner shall also produce the amount as and when required before the Court below and before the respondent police.

21.03.2023

Index :Yes/No

Internet :Yes/No

TK

Note: Issue order copy on 29.03.2023



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V. SIVAGNANAM, J.

TK

To

- 1.The Judicial Magistrate No.II
Attur.
- 2.The Sub Inspector of Police
Thalaivasal Police Station
Salem District.
- 3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.

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