



Crl.R.C.(MD)Nos.151 and 602 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.06.2023

Delivered on : 13.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)Nos.151 and 602 of 2023

Crl.R.C.(MD)No.151 of 2023 :

1.Mary Remina : Petitioner

Vs.

1. State rep.by
The Inspector of Police,
Vellichanthai Police Station,
Kanyakumari District.
Crime No.12 of 2022.

2.Rinold Baby

3.Jerold : Respondents

(R2 and R3 are suo-motu impleaded as per order of the Court, dated 07.02.2023 in Crl.R.C(MD)No.151/2023)

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order passed in Cr.M.P.No.732 of 2022 on the file of the learned Judicial Magistrate Court, Eraniel, dated 09.12.2022 and set aside the same.



WEB COPY



Crl.R.C.(MD)Nos.151 and 602 of 2023

For Petitioner : Mr.I.Pinaygash
For Respondent : Mr.SS.Madhavan,
Government Advocate (Criminal Side)
for R1.

: Mr.S.Titus, for R2 and R3

Crl.R.C.(MD)No.602 of 2023 :

M.Jerold : Petitioner

Vs.

The Inspector of Police,
Vellichanthai Police Station,
Kanyakumari District.
Crime No.12 of 2022.

: Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in connection with Crl.M.P. No.104 of 2022 on the file of the learned Judicial Magistrate, Eraniel, Kanyakumari District and set aside the order dated 09.12.2022 and pass an order to return the boat with Reg.No.IND KL 04-MM-2361 with Engine No. 151101904218 with HP 427-2016 Model SINOTRUCK Type of Vessel TRAWLER recovered from the possession of revision petitioner for interim custody.



Crl.R.C.(MD)Nos.151 and 602 of 2023

For Petitioner : Mr.S.Titus

For Respondent : Mr.SS.Madhavan,
Government Advocate (Criminal Side)

COMMON ORDER

These Criminal Revision Cases are directed against the common order passed in Crl.M.P.No.104 of 2022 and Cr.M.P.No.732 of 2022, dated 09.12.2022 on the file of the Court of the Judicial Magistrate, Eraniel, dismissing the petitions filed under Section 451 of the Code of Criminal Procedure.

2. The petitioner in Crl.R.C(MD)No.602 of 2022, is the first accused in Crime No.12 of 2022 on the file of the respondent Police. The petitioner in Crl.R.C(MD)No.151 of 2023, is the wife of the defacto complainant.

3. On the basis of the complaint lodged by one Benitto, husband of the petitioner in Crl.R.C(MD)No.151 of 2023 alleging that the boat owned by his wife was stolen and on that basis, FIR came to be registered in Crime No.1 of 2022, for the offence under Section 379 IPC on the file of the Marine Police



Crl.R.C.(MD)Nos.151 and 602 of 2023

Station, that as per direction of Additional Superintendent of Police, Coastal Security Group, Ramanathapuram Zone, the case registered in Crime No.1 of 2022 was transferred to the local jurisdictional Police for investigation and the same was sent to the Deputy Superintendent of Police, Colachel, who in turn directed the Inspector of Police, Manavalakurichy to register the case and conduct further investigation and that on the basis of the said direction, another FIR came to be registered in Crime No.12 of 2022 for the offence under Section 379 IPC against four named persons and two other identifiable persons, including the petitioner in Crl.R.C(MD)No.602 of 2023.

4. It is not in dispute that the petitioner in Crl.R.C(MD)No.602 of 2023, has been arrested and he was produced before the jurisdictional Court and that the learned Magistrate, after perusing the documents filed by the accused to prove the ownership of the boat in dispute, has granted bail by imposing certain conditions. It is also not in dispute that the respondent Police has seized the case property i.e., boat by name Holy Grace bearing Registration No.IND-KL-04-MM-2361 and on production before the jurisdictional Court, the same was received and remanded.



Crl.R.C.(MD)Nos.151 and 602 of 2023

WEB COPY

5. The first accused Jerold has filed a petition in Crl.M.P. No.104 of 2022, under Section 451 Cr.P.C., seeking interim custody of the property i.e., boat. During the pendency of the said petition, the defacto complainant has filed an intervening petition raising objections to grant interim custody to the first accused. Subsequently, the defacto complainant's wife Mary Remina has filed an application in Cr.M.P.No.732 of 2022, under Section 451 of Cr.P.C, seeking interim custody of the very same boat, recovered in the above case. The first accused has taken a stand that he is claiming interim custody of the boat by name Holy Grace in Blue color and whereas the defacto complainant's wife Mary Remina is claiming interim custody of the boat by name Mahimai Matha painted in green color and that since the Police has recovered Holy Grace boat, he may be granted interim custody.

6. Considering the submissions made on behalf of both claimants, the learned Judicial Magistrate has personally inspected the boat in dispute and found that the boat was painted in blue color, but in some places, due to scratching, green color was visible and he had taken notes of the same and supplied the same to the both sides as well as to the prosecution. Thereafter,



Crl.R.C.(MD)Nos.151 and 602 of 2023

both the first accused and the defacto complainant's wife have been claiming ownership of the boat, which was recovered in the above case.

7. The learned Judicial Magistrate, after enquiry has passed the impugned order, dated 19.12.2022, by holding that the Civil Court alone can decide the ownership of the boat, dismissed the both petitions seeking interim custody of the boat. Aggrieved by the order of dismissal, both the claimants have preferred the present revisions.

8. It is not in dispute that the said boat was originally owned by one Tmt.Lilly George and she sold the same to Rinold Baby on 24.03.2017 for consideration of Rs.50 lakhs under a sale deed. It is the specific case of the claimant/first accused that he has purchased the said boat from Rinold Baby on 20.09.2021 vide sale note, but whereas according to the other claimant Mary Remina, she purchased the very same boat on 14.06.2020 from the very same Rinold Baby under a sale note.

9. It is evident from the records that both the claimants have filed the sale notes allegedly executed by Rinold baby in their favour and also produced some



Crl.R.C.(MD)Nos.151 and 602 of 2023

receipts showing that the first accused was in possession of the boat and the defacto complainant was in possession of the same. It is pertinent to note that the defacto complainant and her wife had taken a stand that originally the defacto complainant, first accused and other persons had purchased the said boat by paying equally and that subsequently, they have received the amount from Mary Remina and relinquished their right in the boat.

10. As rightly contended by the learned counsel for the first accused, the defacto complainant and his wife have not produced any iota of materials to show that the boat was purchased jointly and that the joint purchasers including the first accused had received their amount and relinquished their right in the boat. More importantly, during the pendency of the above two applications filed under Section 451 of Cr.P.C., the prosecution has filed a counter statement to the petition in Cr.M.P.No.732 of 2022, wherein they have taken a stand that their investigation revealed that the previous owner Rinold Baby has sold the boat to the first accused Jerold; that the defacto complainant and his wife have created a sale document as if the same was executed by Rinold Baby in favour of Mary Remina and that with the help of said fabricated sale document, they had obtained permission from the Fisheries Department.



WEB COPY

11. It is the further case of the prosecution that the first accused and the defacto complainant were previously engaged in joint business and subsequently, there arose some disputes between them and got separated and that therefore, there existed previous enmity between both the parties.

12. When the matter was taken up for hearing, the learned Government Advocate (Criminal Side) would submit that after investigation, they came to know that the first accused is the owner of the boat in dispute; that the defacto complainant and his wife have fabricated a sale document and on that basis obtained permission from the Fisheries Department and that due to their previous enmity, complaint came to be lodged and on that basis, case was registered and during the initial investigation, the boat in dispute has been recovered from the first accused.

13. It is pertinent to note that during the enquiry in the above two applications before the Magistrate Court, the previous owner from whom, both the claimants have allegedly purchased the boat, was examined and in her evidence, she had taken a stand that she purchased the boat from Lilly George,



Crl.R.C.(MD)Nos.151 and 602 of 2023

Ernakulam; that he sold the boat to the first accused/Jerold on 20.09.2021 and after the said sale, the Jerold has been in possession and enjoyment of the said boat in Munambam, Ernakulam District, Kerala and that she does not know the Mary Remina. In cross examination, she would admit the execution of sale deed in favour of the first accused Jerold and whereas, she has disputed her signature found in the sale note standing the name of Mary Remina.

14. Section 451 of Cr.P.C, speaks about the proper custody of such property pending the conclusion of the inquiry or trial. It is pertinent to note that the person from whom the property was seized, is normally entitled to the custody of the same, but at the same time, he will not be entrusted with the property, if there is *prima facie* material on record showing that he has committed some offence. In such an event, the claim, if any, of the other person, or the complainant can be considered. While examining the rival claimants, the question as to who was in lawful possession at the time of seizure and nextly earlier to the event which gives cause to that seizure are important. In case, if no *prima facie* case for any offence is made out against the person from whom, the property is seized, he can be presumed to have been in lawful possession of the same at the time of seizure and the property can be entrusted with him.



WEB COPY

15. At this juncture, it is necessary to refer the decision of this Court in ***Muthiah Muthirian Vs. Vairaperumal Muthirian*** reported in ***AIR 1954 Madras 214*** relied on by the learned Magistrate, wherein this Court has held that where there is a "doubt as to ownership" of property, or where a "question of bona fide title" by purchase or otherwise arises, the duty of the criminal Court is to leave the parties to their remedy in a civil suit. This Court has listed out the modes of disposal and the same are extracted hereunder :

(1) It may return the property to the person from whom it was seized and leave the dissatisfied party to his remedy in a civil Court.

(2) It may keep the property in its custody pending the decision of a competent civil Court. This course may not generally be desirable and as pointed out in - 'Mahomed Yusuf v. Krishna Mohan', AIR 1938 Cal 17(20) (J), the desirable course is that the Court should in such cases deal with the matter under Section 523 but in no circumstances, ordinarily whether the case be under this section or under Section 523, should an order be made for detention in court custody or in the custody of one of the parties, conditional on a civil suit being instituted, for this might mean detention for an indefinite period, if no such suit was brought.



WEB COPY

(3) *In cases where property is claimed by a person other than the person from whom it was faken, the Court may impose conditions on the person to whom it is delivered in order that the property or the value thereof may be forthcoming in case the rival claimant establishes a title to it : 2 Weir 667 (668) (I); - 'Kedarnath Dey v. Mahomed Siddik', AIR 1924 Cal 455 (K).*

(4) *It may, where the property is subject to speedy and natural decay, order it to be sold and the proceeds retained in custody of the Court until a right to it ,is established by civil Court: - 'Chenga Reddi v. Ramasami Goun-den', AIR 1915 Mad 588 (2) (L).*

16. In the above decision case, taking note of the facts and circumstances of that case, the trial Court was directed to return the property to the complainant. Generally, each case will be governed by its own facts and circumstances and it cannot be laid down as a broad proposition of law that in no case custody of the seized property be given to the accused or to the complainant pending disposal of the main case.



Crl.R.C.(MD)Nos.151 and 602 of 2023

WEB COPY

17. Now coming to the present case, as already pointed out, the prosecution has taken a specific stand that the first accused is the owner of the boat and that the defacto complainant and defacto complainant's wife have fabricated the sale document and on that basis, permission was taken from the Fisheries Department, this Court is at loss to understand as to why the learned Magistrate has not considered the stand of the prosecution and dismissed both the applications. One other important fact to be noted is that the case property i.e., boat has been recovered from the first accused and the said factum would go to show that the first accused was in possession of the boat prior to the seizure.

18. Considering the above and taking note of the facts that the previous owner has given evidence that she sold the boat to the first accused, that the said boat has been recovered from the first accused and also considering the stand taken by the prosecution, this Court has no hesitation to hold that the learned Magistrate, without considering the facts and circumstances of the case in proper perspective, has mechanically dismissed both the applications and as such, the impugned order in dismissing the petition filed by the accused is liable



Crl.R.C.(MD)Nos.151 and 602 of 2023

to be set aside. But at the same time, the impugned order dismissing the application filed by the rival claimant Rinold Baby cannot be found fault with and the same is liable to be confirmed.

19. In the result, the Criminal Revision Case in Crl.R.C(MD)No.602 of 2023, is allowed and the impugned order, dated 09.12.2022, in Crl.M.P. No.104 of 2022 on the file of the learned Judicial Magistrate, Eraniel, Kanyakumari District, dismissing the petition filed under Section 451 Cr.P.C., is set aside and the property i.e., boat bearing Reg.No.IND KL 04-MM-2361, is ordered to be returned to the petitioner/first accused for interim custody subject to the following conditions:-

(i) the petitioner shall execute a bond for the present value of the boat to the satisfaction of the learned Judicial Magistrate, Eraniel;

(ii) the petitioner shall produce the original registration certificate of the vehicle before the learned Judicial Magistrate, Eraniel;

(iii) the petitioner shall not alienate and shall not make any alteration in the property;



Crl.R.C.(MD)Nos.151 and 602 of 2023

WEB COPY (iv) the petitioner shall produce the vehicle as and when required by the Court.

20. Consequently, the Criminal Revision case in Crl.R.C(MD)No.151 of 2023, is dismissed. The petitioner in Crl.R.C(MD) No.151 of 2023, is at liberty to approach the Civil Court to establish her right over the case property.

13.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das

To:-

- 1.The Judicial Magistrate, Eraniel.
2. The Inspector of Police,
Vellichanthai Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

14/15



WEB COPY



Crl.R.C.(MD)Nos.151 and 602 of 2023

K.MURALI SHANKAR, J.

das

Pre-delivery order made in
Crl.R.C.(MD)Nos.151 and 602 of 2023

13.07.2023