



Crl.R.C.(MD) No.529 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.529 of 2023

and

Crl.M.P.(MD)Nos.7531 and 11062 of 2023

K.Mariyappan

... Petitioner/
Defacto
Complainant

Vs.

1.State represented by
Inspector of Police,
District Crime Branch,
Thanjavur.

... 1st Respondent/
Complainant

2.M.Pushparajan

... 2nd Respondent/
Accused

Prayer : This Criminal Revision has been filed under Section 397 of Criminal Procedure Code, to call for the records of the order dated 17.02.2023 in Crl.M.P.No.95 of 2023 in Crime No.34 of 2022 on the file of Judicial Magistrate No.1, Thanjavur and set aside the same.



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For Petitioner : Mr.H.Lakshmi Shankar
For R1 : Mr.SS.Madhavan,
Government Advocate (Crl. Side)
For R2 : Mr.S.Kanagarajan

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.95 of 2023 dated 17.02.2023 on the file of the Court of Judicial Magistrate No.1, Thanjavur, in granting interim custody of the property involved in the case registered in Crime No.34 of 2022.

2. Admittedly, the revision petitioner is the defacto complainant and the second respondent is the first accused.

3. It is seen from the records that the second respondent has filed an application under Sections 451 and 457 of Cr.P.C. seeking interim custody of the property involved in the above case. The first respondent police has raised their serious objections to grant interim custody of the property to the second respondent. But it is seen from the impugned order that the learned Magistrate has passed the order, as if, the second respondent was



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the defacto complainant and allowed the petition and granted interim custody by imposing some conditions. Aggrieved by the said order, the defacto complainant has preferred the present revision.

4. The learned counsel appearing for the revision petitioner would mainly submit that no notice was sent to the revision petitioner and their side was not heard before passing the impugned order. It is evident from the impugned order that the revision petitioner was not shown to be heard.

5. The learned counsel appearing for the second respondent would submit that in pursuance of the order of the learned Magistrate, they have complied with the conditions and received the property in dispute for interim custody. He would further submit that the respondent police may be directed to file charge sheet and they are ready to face the trial and that the learned Magistrate, considering the evidence, can pass final orders with respect to the property in dispute.

6. Admittedly, considering the complaint raised by the learned counsel appearing for the revision petitioner, this Court directed the



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Registry to call for a report from the learned Magistrate. In pursuance of the same, the learned Judicial Magistrate No.1, Thanjavur, submitted a report dated 24.07.2023, wherein, it has been stated that the interim custody of the property has been handed over to the first accused as the ownership was not disputed by the defacto complainant and after duly hearing the respondent/State. But as already pointed out, the Magistrate Court has neither sent any notice nor gave any opportunity to the revision petitioner to putforth their contentions.

7. Considering the above facts and circumstances and also the way in which the impugned order was passed and also taking note of the fact that the impugned order was passed, as if, the same was at the instance of defacto complainant, this Court is of the clear view that the impugned order, which is not in accordance with law, is liable to be set aside. Consequently, the trial Court is directed to conduct fresh enquiry in the application in Crl.M.P.No.95 of 2023 after hearing all the parties including the revision petitioner and pass orders on merits and in accordance with law within a period of 15 days from the date of receipt of copy of this order.



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8. With the above direction, this Criminal Revision Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

05.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
csm

To:-

- 1.The Judicial Magistrate No.1,
Thanjavur.
- 2.The Inspector of Police,
District Crime Branch,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

esm

**ORDER MADE IN
Crl.R.C.(MD)No.529 of 2023
and
Crl.M.P.(MD)Nos.7531 and 11062 of 2023**

Dated : 05.10.2023