



Crl.R.C.(MD).NO.524 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 01.12.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.524 of 2023

S.Balaji

... Petitioner/Defacto Complainant

Vs.

The State rep by
The Inspector of Police,
Airport Police Station,
Trichy District.
(Cr.No.350 of 2017)

... Respondent/Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to allow the above Criminal Revision Case thereby setting aside the order dated 05.03.2019 passed in Crl.M.P.No.4598 pf 2018 in Crime No.350 of 2017 in R.P.No.448 of 2017 dated 05.03.2019 on the file of the Judicial Magistrate No.6, Trichy.

For Petitioner : Mr.S.Deepak
For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition has been filed to set aside the order passed by the learned Judicial Magistrate No.6, Trichy, in Crl.M.P.No.4598 pf 2018 in Crime No.350 of 2017 in R.P.No.448 of 2017 dated 05.03.2019.



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2.(i) The petitioner is the defacto complainant in Crime No.350 of 2017.

One Karthick @ Muthu Vairavan and Anbazhagan approached the petitioner herein for purchasing of gold from the Trichy Airport Customs Officials. On believing their words, on 17.05.2017, the petitioner along with the amount of Rs.22,60,000/- contacted the said persons for purchasing of 1 kg of gold. In the Trichy Airport, one other person received the said amount from the petitioner and asked the petitioner and the Anbazhagan to get into a Skoda Car. When the Car was going to 2 kilometre away from the Trichy Airport, a Bolero Car intercepted the Skoda Car and 5 persons from the Bolero Car snatched the said amount by threatening and assaulting the petitioner.

(ii) Based on the complaint lodged by the petitioner, a case has been registered in Crime No.350 of 2017 for the offences punishable under Sections 420, 323, 506(ii) of IPC. On enquiry, it was found that from the above said amount, the accused persons purchased the material objects namely, a white colour swift Car in the name of one Amutha, two Gold Biscuits weighing about 100 grams and 48 grams each. The Investigating Agency arrested the accused and recovered the following items from the accused:-

“A white colour swift Car, a Skoda Car, Sticker Plate, a gold biscuit weighing 100 grams, a gold biscuit weighing 48 grams, a Number Plate and a Weight Machine.”



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(iii) Thereafter, the defacto complainant filed a petition under Section 457 of Cr.P.C., in Crl.MP.No.4598 of 2018 before the Judicial Magistrate No.6, Trichy District, seeking interim custody of the above items. The said petition was dismissed by the learned trial Judge.

3. Challenging the same, the petitioner filed this Revision before this Court.

4. The learned counsel for the petitioner submitted that on the complaint given by the petitioner, the respondent police registered a case in Crime No.350 of 2017 and recovered all the items belongs to the accused persons. He placed reliance of the judgment of the Hon'ble Supreme Court reported in **Sunderbai Ambalal Desai V. The State of Gujarat and General Insurance Council V. State of AP**. In view of the above law laid down by the Hon'ble Supreme Court, he entitled to interim custody of the material objects in order to promote his business. So, the learned counsel for the petitioner seeks interim custody of the material objects and seeks indulgence of this Court to allow this petition.



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5. The learned Additional Public Prosecutor also obtained a written instructions from the Investigating Officer and the same as follows:-

நாள் - 22.11.2023.

அனுப்புநர்:-
காவல் ஆய்வாளர்,
ஏர்போர்ட் காவல் நிலையம்,
திருச்சி மாநகரம்.

பெறுநர்:-
அரசு கூடுதல் நீதிமன்ற வழக்கறிஞர் அவர்கள்,
சென்னை உயர் நீதிமன்ற மதுரை கிளை,
மதுரை.

ஆய்வு:-
திருச்சி மாநகரம் ஏர்போர்ட் காவல் நிலைய குற்ற எண் - 350/2017 W/S
420,323,500 IPC & 395, 307 120 (b) IPC - PNC NO - 160/2022 ன் படி வழக்கின் இரண்டாவது
எதிரி அன்பு & அன்பரன் என்பவரிடமிருந்து பெறப்பட்ட ஒப்புதல் வாக்கு
மூலத்தில் புகார்தாரர் பாலாஜியிடம் பறித்த பணத்தில் இருந்து வழக்கு சொத்தான
(1) 100 கிராம் தங்க பிஸ்கட், (2) 48 கிராம் தங்க பிஸ்கட் வாங்கியதாக கூறிய மேற்படி
எதிரியிடம் இருந்து கைப்பற்றப்பட்ட வழக்கு சொத்துக்களை கனம் குற்றவியல்
நீதித்துறை நடுவர் எண் - 6 திருச்சி நீதிமன்றத்தில் கடந்த 14.12.2017 ந் தேதி
ஒப்படைத்து ஆர்பி.நம்பர் - 448/2017 பெறப்பட்டுள்ளது. மேற்படி வழக்கு
சொத்தான இரண்டு தங்க பிஸ்கட்டுகளை யாரும் உரிமை கோரி நீதிமன்றத்தில்
மனுதாக்கல் ஏதும் செய்யவில்லை மேலும் வழக்கானது நீதிமன்ற நிலுவையில்
இருந்து வருகிறது என்பதை பணிவுடன் தெரிவித்துக்கொள்கிறேன்.

W. 7/11/23
காவல் ஆய்வாளர்,
ஏர்போர்ட் காவல் நிலையம்,
திருச்சி மாநகரம்.



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6. The learned Additional Public Prosecutor appearing for the State submitted that the petitioner is a business man. The learned trial Judge dismissed the petition filed by the petitioner on the grounds that the case is pending for trial and if the properties are returned to the revision petitioner, he would sold the same or he would not produce the same before the Court at the time of trial. The learned trial Judge rightly dismissed the petition filed by the petitioner and he prayed for dismissal of this Revision.

7. This Court considering the rival submissions and perused the records and the impugned order passed by the learned trial Judge.

8. The learned Additional public Prosecutor on instructions, submitted that all the recovered items are belongs to the revision petitioner. In the said circumstances, the petitioner is entitled to interim custody.

9.The Honourable Supreme Court in the case of ***Sunderbai Ambalal Desai V. The State of Gujarat***, reported in ***(2002) 10 SCC 283***, issued following guidelines.



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10.To avoid such a situation, in our view, powers under Section 451 CrPC should be exercised promptly and at the earliest.

11.With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12.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)(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and*
- (3)(3) after taking proper security.*

13.For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the



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evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition

14.In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the court may direct that such articles be kept in bank lockers. Similarly, if articles are required to be kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the court may direct that such articles be handed back to the investigating officer for further investigation and identification. However, in no set of circumstances, the investigating officer should keep such articles in custody for a longer period for the purposes of investigation and identification. For currency notes, similar procedure can be followed.

18.In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be



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auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

10.As per the judgment of the Hon'ble Supreme Court reported in ***Sunderbhai Ambalal Desai v. State of Gujarat***, reported in (2002) 10 SCC 283, and unreported judgment of this Court in ***Crl.O.P.No.5254 of 2021*** in ***M/s.PMJ Gems and Jewellers Pvt.Ltd., v. The Inspector of Police, Sankakiri Police Station, Salem District*** and ***Crl.R.C(MD).No.802 of 2023***, the petitioner's right to claim the return of gold biscuits and vehicle is no longer res integra. Therefore, the petitioner is entitled to get the relief prayed in Crl.M.P.No.4598 of 2018 on the file of the trial Court. Hence, the finding of the learned trial Judge that the petitioner has not produced any documents to prove ownership is perverse and hence, this Court is inclined to set aside the same.



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11.It is settled principle that the pendency of the criminal case has not deprived the complainant/owner of the property, who has nothing to do with the alleged offence to deal with the property. Even according to the investigating officer, the petitioner is the owner of the gold biscuits and vehicle. Therefore, the petitioner is entitled to get back the above said properties.

12.Accordingly, the impugned order passed by the learned Judicial Magistrate No.6, Trichy, in Crl.M.P.No.4598 of 2018 in Crime No.350 of 2017 in R.P.No.448 of 2017 dated 05.03.2019, is set aside and this Criminal Revision Case is allowed with the following terms:

(I)(a). The learned trial Judge is hereby directed to hand over the two Gold Biscuits weighing about 100 grams and 48 grams, recovered by the investigating agency after preparing the Panchanama in the presence of the accused by taking photograph of the gold biscuits in accordance with the Rule 257 of the Criminal Rules of Practice, 2019 framed by this Court.



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(I)(b). The petitioner is hereby directed to furnish the bank guarantee for the value of the gold biscuits to the satisfaction of the learned Judicial Magistrate.

(II). The white Shift Car stands in the name of Amutha Chandrasekar, is hereby directed to handover to the petitioner with the following conditions:

(II) (a). The learned Judicial Magistrate No.6, Trichy, is directed to release the vehicle by following the procedure stated in Rule 257 of the Criminal Rules of Practice, 2019.

*(II) (b). The petitioner should execute an own bond of sum of **Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand Only)** to the satisfaction of the learned Judicial Magistrate No.6, Trichy District.*

(II) (c). The petitioner shall furnish an affidavit of undertaking to the effect that he shall not alienate the properties in any manner till the disposal of the



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case.

(II) (d). The petitioner shall not alter the character and nature of the vehicles till the disposal of the case.

(II) (e). The petitioners are directed to take four side photographs of their vehicles and shall produce it before the Court.

01.12.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

- 1.The Judicial Magistrate No.6,
Trichy.
2. The Inspector of Police,
Airport Police Station,
Trichy District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Section Officer,
Record Section(Criminal)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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