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Crl.O.P.(MD)No.17234 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.17234 of 2022

Suganthi

... Petitioner

Vs.

1.The State rep.by
The Inspector of Police,
Thirupananthal Police Station,
Thanjavur District.
Crime No.754/2021.

2.Ayyappan

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the order dated 24.08.2022 made in Crl.M.P.No.247 of 2022 in Cr.M.P.No.2795 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvudaimaruthur and set aside the same.

For petitioner

: Mr.K.M.Karunakaran

For R1

: Mr.S.Manikandan
Government Advocate (Crl.side)

For R2

: Mr.K.Guhan



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ORDER

This Criminal Original Petition has been filed to call for the records relating to the order dated 24.08.2022 made in Crl.M.P.No.247 of 2022 in Cr.M.P.No.2795 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Thiruvidadaimaruthur and set aside the same.

2. The case of the petitioner is that the petitioner is the wife of one Saravanan, who is the accused in Crime No.754 of 2021, which was registered for the offence punishable under Sections 454 and 380 IPC, based on the complaint given by the second respondent that cash and gold ornaments were stolen by the accused persons. During the time of investigation, the Investigating Agency has recovered cash and gold ornaments from one Sakthivel and the petitioner's husband and, has recovered gold ornaments from Iyalayur Canara Bank which were pledged by the petitioner and her husband. Thereafter, the second respondent has filed a petition under Section 451 Cr.P.C, before the trial Court for return of the properties, which is pending, whereas, the petitioner has filed a petition under Section 311 Cr.P.C to examine the witnesses, namely, Thillaikannu and Sivaprakasam to prove her case



regarding the recovered gold ornaments from Iyaliyur Canara Bank and the same was numbered in Cr.M.P.No.247 of 2022 on the file of the District Munsif Cum Judicial Magistrate, Thiruvidadaimaruthu. But the trial Court, without considering the factual aspects, has dismissed the petition filed by the petitioner. Hence, the petitioner, having no other alternative remedy, has approached this Court by way of this petition.

3. The learned counsel appearing for the petitioner submits that the petitioner's husband was arrested in Crime No.754 of 2021 and during investigation, the second respondent has filed the petition under Section 451 Cr.P.C for return of the property which was objected by the petitioner, since the petitioner's husband is in prison and she has filed a petition to examine one Thillaikannu and Sivaprakasm to prove her case regarding the recovered gold ornaments from Iyaliyur Canara Bank which were pledged by the petitioner. Without considering the same, the trial Court has dismissed the petition filed by the petitioner.

4. The learned counsel appearing for the second respondent submits that one Sakthivel and the petitioner's husband had stolen the cash and gold ornaments belonging to the second respondent, for which, the second respondent has made a complaint before the first respondent



Police and the first respondent Police recovered the stolen articles from the accused persons. Hence, he has filed a petition under Section 451 Cr.P.C for return of the property. During the pendency of the said petition, the petitioner, who is the wife of the accused, has filed a petition under Section 311 Cr.P.C for examination of Thillaikannu and Sivaprakasam who are not relating to the petition filed by the second respondent. The said factum has also been elaborately discussed by the trial Court and the petition filed by the petitioner was rightly rejected which does not warrant any interference by this Court. Hence, he prays for dismissal of this petition.

5. It appears that the petitioner's husband was implicated in Crime No.754 of 2021 which was registered for the offence punishable under Sections 454 and 380 IPC based on the complaint given by the second respondent and during the investigation, the Investigating Officer has recovered cash and gold ornaments from the said Sakthivel and the petitioner's husband and has recovered gold ornaments from Iyaliyur Canara Bank which were alleged to have been pledged by the petitioner and her husband. Thereafter, the second respondent has filed a petition for return of property under Section 451 Cr.P.C, whereas, the petitioner has filed a petition under Section 311 Cr.P.C in Cr.M.P.No.247 of 2022,



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to examine the witnesses, namely, Thillaikannu and Sivaprakasam, to prove her case that the recovered gold ornaments by the Investigating Officer from Iyaliyur Canara Bank belong to her, however, the trial Court has dismissed the petition filed by the petitioner. Examination of the witnesses will not deprive the rights of the second respondent and no prejudice would be caused to the second respondent. Hence, the order passed by the learned District Munsif cum Judicial Magistrate, Thiruvidadaimaruthur in Crl.M.P.No.247 of 2022 in Cr.M.P.No.2795 of 2021 dated 24.08.2022 is set aside. The trial Court is directed to permit the petitioner to examine the defence witnesses, namely, Thillaikannu and Sivaprakasam, in which, an opportunity may be given to the second respondent to cross-examine them. However, the trial Court, before returning the recovered properties from the accused persons, has to adjudicate the issue, and thereafter, may consider for returning the properties to the concerned person who is entitled for. The trial Court is directed to dispose of the petition filed by the second respondent under Section 451 Cr.P.C within a period of two weeks from the date of examination of the defence witnesses, namely, Thillaikannu and Sivaprakasam.



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6. Accordingly, this Criminal Original Petition is allowed.

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Index : Yes/No

Internet : Yes/No

ssb

To

1.The learned District Munsif cum Judicial Magistrate,
Thiruvidaimaruthur.

2.The Inspector of Police,
Thirupananthal Police Station,
Thanjavur District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI. J.

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