



Crl.R.C.(MD).No.945 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2023
Pronounced on : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.945 of 2023

Menaka

... Petitioner/Petitioner

Vs.

1. The State rep by its
Inspector of Police,
District Crime Branch,
Dindigul-District
Crime No.2 of 2022.

... Respondent/Respondent

2. Sri Kaleesuwari Refinery Private Limited,
Rep by its General Manager, HR,
S.Palani,
Having Office at Shanmuga Nagar,
Thalaiyuthu, Palani, Dindigul.

... Petitioner/ Proposed
2nd Respondent/Third Party

*(R2 is impleaded as per Order of the Court dated 05.09.2023 in Crl.M.P.
(MD).No.12899 of 2023 in Crl.R.C(MD).No.945 of 2023)*

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call records and set aside the return docket order passed by the Learned Judicial Magistrate Court No.II, Dindigul, in Crl.M.P.SR.No.7883 of 2023, dated 08.08.2023 and take the petition on file.



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For Petitioner : Mr.S.Sankar

For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl.Side) for R1

: Mr.S.Muthumalairaja for R2

ORDER

This petition has been filed to set aside the return docket order passed by the learned Judicial Magistrate Court No.II, Dindigul, in Crl.M.P.SR.No.7883 of 2023, dated 08.08.2023.

2. The defacto complainant is working as Deputy Senior Head in the second respondent Company. The second respondent company is engaged in refining edible oil, coconut crushing and solvent extraction in the factory situated at Shanmuga Nagar, Thlaiyuthu, Palani. They are also doing refinery processing of vegetable oil involving degumming, Neutralization, Bleaching, De-waxing (Cooling & Chilling) and Deodorization. In the said factory, one Sivakumar is working as Assistant General Manager and one Kirun Kumar is working as Assistant Manager. They conspired along with other accused created a false stock report and misappropriated 1597.82 Metric Tons. Thereby, caused loss to the tune of Rs.18.84 crores to the Company. Therefore, he lodged a complaint before the respondent police. The respondent police registered a case



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in Crime No.2 of 2022 for the alleged offences under Sections 120(b), 406, 462, 468, 477A. After registration of the said case, they arrested the accused and on the basis of the confession, huge quantity of oils among the above misappropriated oils kept under the custody of the petitioner's factory and the same was seized by the respondent police. According to the Investigating Agency, the same was edible oil namely, Crude Sunflower Oil. But, according to the petitioner, the seized oil from the premises of the petitioner is the non-edible oil and the same is used for the preparation of lamp oil. The same cannot be used for cooking purpose. The petitioner is running a business under the name and style of “Sarathy Krishnan” and they processed the lamp oil from the raw material of petroleum products namely, Rajprol SBF, Group, Base oil Group. They also produced the voucher for the said seized items. Therefore, they filed a petition in Crl.MP.No.13680 of 2022 before the learned Judicial Magistrate Court No.II, Dindigul, under Section 451 Cr.P.C seeking interim custody of the oil. The said petition was dismissed by the learned trial Judge on 05.09.2022. Thereafter, they filed revision before this Court in Crl.RC.(MD).No. 989 of 2022 and the same was disposed of with the following terms on 14.10.2022:-

*“5.Though the petitioner seeks for return of seized oil,
which is not edible in nature, this issue can be decided only*



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based on a report from the Forensic Lab. However, the said report is yet to be received. Further, the investigation is in premature stage. Therefore, this Court is inclined to dismiss the criminal revision. However, the respondent is directed to take necessary steps to get a report from the Forensic Lab within a period of two months from the date of receipt of a copy of this order and after getting the report, the petitioner is at liberty to file a fresh petition before this Court. Accordingly, this Criminal Revision Case is dismissed.”

3. Thereafter, the petitioner filed another petition in Cr.MP.SRNo.7883 of 2023 before the learned trial Judge, seeking interim custody of the said oil and the same was dismissed on 08.08.2023 by passing the following order:-

“As in Crl.R.C.(MD)No.989 of 2022 dated 14.10.2022, revealed that Crl.RC(MD) dismissed and liberty to file a fresh petition to this Court, after respondent file a report. Hence, how this petition is maintainable before this Court.”

4. Aggrieved over the same, the present revision has been filed. Pending the revision, the second respondent filed the impleading petition claiming the ownership of the said property.



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5. The learned Additional Public Public earlier submitted the report of the FSL. The material portion of the report dated 10.02.2023 is as follows:-

கேள்வி:-மாதிரிக்காக எடுக்கப்பட்ட ஆயில்களில் சன்பிளவர் ஆயில் தரம் உள்ளதா? பதில்- மாதிரிக்காக எடுக்கப்பட்ட ஆறு ஆயில்களும் சன்பிளவர் ஆயில் தரத்தில் இல்லை.

6. On the basis of the report, the learned counsel for the petitioner counsel submitted that the petitioner claim is legally maintainable one. He submitted that the seized oils are non-edible oils and the report clearly stated that the same is not used for human consumption. In the said circumstances, he seeks the release of goods in favour of him.

7. On contrary, the learned counsel for the second respondent submitted that since the sample was taken after a long time, such a finding has been given.

8. Hence, this Court asked the food analyst to submit the report. They submitted the following report:-

“I respectfully submit that every packaged oil samples received in this Laboratory were having the label particular of Best before 6 months from the date of manufacturing. But, the above 6 oil samples were received in this Laboratory after 11



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months without label declaration and hence, the above 6 samples are not fit for edible purpose.”

9. From the above factual circumstances, the petitioner claims the ownership over the seized oil on the basis of the purchase voucher and claims the oil as a non-edible oil used as lamp oil. The second respondent claims ownership over the seized oil over some purchase voucher and claims the oil as a edible oil used for human consumption. But, the report of the food analysis stated that the oil is not the edible oil and the same contained substandard refined sunflower oil and not fit for the edible purpose. It is also stated that without label declaration, the test was conducted after 11 months from the date of the seizure.

10. The both parties made a claim over the seized goods on the basis of the purchase voucher. As held by the Hon'ble Supreme Court in the case of ***Bharat Sanchar Nigam Limited Vs. Suryanarayanan and Another*** reported in ***2020 12 SCC 637*** if there is any rival claim relating to the seized goods, the criminal Court has no jurisdiction to determine the rival claim and the same is to be decided in the civil Court. The relevant paragraph is as follows:-

“14. We are unable to subscribe to the submission which



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has been urged on behalf of the first respondent that when it makes an order under Section 452, the court is merely required to determine the source from which the property was seized. Indeed, if this construction were to be placed, it would mean that the right of a person who claims title to the property would be subordinate to the claim of a person from whose possession the property was seized. A claim of title to the goods which have been seized is a relevant consideration while passing an order under Section 452. Where there are conflicting claims of entitlement to the property, the Magistrate may deal with them or, where it is found that the rival claims need to be resolved after an evidentiary trial, relegate the conflicting claimants to prove their rights and entitlements before a competent court.

16.The above observations indicate that the authority which is entrusted to the court under Section 452 CrPC (equivalent to Section 517 of the Code of 1898) is judicial in nature. As a judicial power, it has to be exercised for valid reasons keeping in view the class and nature of the property and the material before the court. Normally the court would, following the discharge or acquittal of the accused, restore the property to the person from whose custody it was taken. A departure from this rule of practice is not lightly made when there is no dispute or doubt that the property which was seized from the custody of the accused belongs to him. These



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observations in the decision of this Court in Madhavan [N. Madhavan v. State of Kerala, (1979) 4 SCC 1 : 1979 SCC (Cri) 883] clearly indicate that ordinarily the person from whom the property was seized would be entitled to an order under Section 452, when there is no dispute or doubt that the property belongs to him. It is only when the property belongs to the person from whom it was seized that such an order can be passed.

17. Where a claim is made before the court that the property does not belong to the person from whom it was seized, Section 452 does not mandate that its custody should be handed over to the person from whose possession it was seized, overriding the claim of genuine title which is asserted on behalf of a third party”

11. Hence, this Court directs both the parties to approach the civil Court to establish the title on the basis of the purchase voucher produced before this Court. It is always open to the parties to claim the reasonable damages against the rival party in the said criminal proceedings.

12. In view of the above factual circumstances, the case of the prosecution is that the refined sunflower oil is illegally transported to the petitioner's company and the same is meant for human consumption. As per the Analysis



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Report, the oil is not fit for the human consumption and this Court rejects the prayer of the petitioner and the claim of the second respondent by passing the following order:-

“The respondent police and the Food Analyst of the District, hereby directed to make the destruction of recovered of 16.6 tons from the premises of the petitioner's factory, in the presence of the jurisdictional Superintendent of Police forthwith and submit the report before this Court within a period of 15 days from the date of receipt of a copy of this order.”

13. Since this Court directs the parties to approach the civil Court to establish the title, the succeeding party is entitled to get reimbursement of the value of the seized oil from the non-succeeding parties with the interest from the date of filing of the suit. The civil Court is hereby directed to take independent conclusion without influenced by any of the discussion made in this order.



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14. With the above directions, the Criminal Revision is dismissed and the claim of the second respondent is also not entertained.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

***Note :** The Registry is directed to return the purchase voucher submitted by the second respondent in sealed cover dated 26.09.2023*

To

1. The Judicial Magistrate No.II,
Dindigul.
2. The Inspector of Police,
District Crime Branch,
Dindigul-District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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Pre-delivery Order made in
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