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Crl.R.C(MD)No.1185 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.12.2023

Pronounced on : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1185 of 2023

Sheik Thavooth @ Sheik Dawook

... Petitioner

Vs.

The Inspector of Police,
Kottampatti Police Station,
Melur,
Madurai.
(In Crime No.129 of 2023)

... Respondent

PRAYER : This Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside order passed by the Judicial Magistrate, Melur in Crl.M.P.No.2010 of 2023, dated 04.09.2023 and return the property amount of Rs.50,00,000/- to the petitioner.

For Petitioner : Mr.SMA.Jinnah

For Respondent : Mr.K.Sanjay Gandhi
Government Advocate (Crl.side)



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ORDER

This Criminal Revision Case is filed to set aside the order dated 04.09.2023 passed in Crl.M.P.No.2010 of 2023 on the file of the learned Judicial Magistrate, Melur and to return the property amount of Rs.50,00,000/- to the petitioner.

2.The brief facts of the case:

The revision petitioner is defacto complainant in the case registered in Crime No.129 of 2023 on the file of the respondent police. On 12.04.2023, the petitioner's cousin brother Samsudheen had sent some money through one Dinesh to the petitioner for handing over the same towards tickets booked through the Travels. On the same day at about 12.30 p.m. the petitioner along with his wife proceeded to Trichy in their Mahindra car bearing registration No.TN 64 L 2646 with acting driver Mohideen Sithik. While they were reaching Karungalakudi they were intercepted by two persons identifying themselves as police of Kottampatti and on search they took away the money. The petitioner came to Kottampatti Police and they did not find the said person. Hence, the petitioner lodged a complaint and the case was registered. The respondent police arrested the accused and seized the money and remanded the same into the Judicial Magistrate Court, Melur and the said



sum was deposited into Fixed Deposit on 13.07.2023. So, the petitioner filed the petition in Crl.M.P.No.2010 of 2023 seeking interim custody of the amount. The petition was strongly resisted by the respondent police. After hearing both the learned Judicial Magistrate, Melur dismissed the petition on 04.09.2023. Being aggrieved by the order, the petitioner preferred this Criminal Revision Case.

3. Heard both side and perused the records in this Criminal Revision Case.

4. The learned counsel appearing for the revision petitioner has submitted that the petitioner was taking the alleged amount in question which was given by his family friend Samsudheen for handing over the same to Travel Agency at Trichy for booked tickets. The alleged amount was taken from the car by the accused persons, who were arrested by the respondent police and also seized the amount by the respondent police. The petitioner is entitled to claim the aforesaid money for interim custody as he comes within the ambit of the word 'if the person so entitled to known' as per section 457(2) Cr.P.C. The owner of the money Samsudheen is ready to file affidavit. The Hon'ble Supreme Court has laid down principles for disposal of seized valuable properties in the case



of “**Surenderbhai Ambalal Desai**’ reported in **AIR 2003 SC 638**. The respondent has not filed any rebuttal material that the seized amount is neither belonged to the petitioner nor taken away by the accused from the petitioner. In the absence of any rebuttal proof, the seized money *prima facie* belongs to the petitioner only and he is entitled to interim custody. The petitioner is ready to file an undertaking that he would return the same as and when necessary required by the Court and also produce necessary sureties. In support his argument the petitioner’s counsel relied on the following citations:

**(1) Order of the Supreme Court in SLP(Crl.)
No.2745 of 2002 (Sunderbha Ambalal Desai case)**

**(2) CDJ 2018 MHC 5184 (Anvar @ Anvar
Sadath /v/ The Inspector of police, Madhukkarai
Police Station, Coimbatore)**

5. The learned Government Advocate (Crl.side) for the respondent filed counter and contended that as per averment of the petitioner he is not the owner of the property and the alleged Samsudheen is the owner of the property. Hence, the petitioner has no *locus standi* to file the petition seeking return of property. The seized amount of Rs.50 Lakhs was remanded before the trial Court under RPR.No.77 of 2023 and the



same was deposited in State Bank of India in Fixed Deposit. The trial Court has rightly held in the impugned order that the petitioner has not filed any proof to show that the petitioner is the owner of the property. Even though the petitioner is the defacto complainant he is not the owner of the property. Even as per FIR contents the said Samsudheen is the only owner of the property. Therefore, there is no need for interference of the order of the trial Court. Therefore, he strongly opposed and prays for dismissal of this revision.

6. On hearing both, it is clear that on 12.04.2023 at 12.30 p.m. near Karuungalakudi while the petitioner was proceeding to Trichy in his car along with Rs.50 lakhs, he was intercepted by the accused as police of Kottampatti Police Station and taken away the money after search. In fact, the accused were not seen in the police station. On the basis of complaint lodged by the petitioner, the respondent police registered the case and arrested the accused and also seized the entire money from the accused. The seized money was remanded before trial Court under RPR.No.77 of 2023 and the same is now with SBI under Fixed Deposit. There is no dispute by both side.



7. Now the petitioner seeks return of the seized money as he is entitled to interim custody as per provision of 457(2) of Cr.P.C. On perusal of the contents of the complaint, FIR and affidavit filed by the petitioner, the amount in question is belonged to the alleged Samsudheen. The petitioner has not filed any proof to show that he is the owner of the seized property. The petitioner has not assigned valid reason what prevented the said Samsudheen to file the petition for return of property. Instead, the petitioner states that Samsudheen is ready to file affidavit. The petitioner has no valid ground for return of property as rightly held by the trial Court and disclosed by the respondent police that the petitioner is not the owner of the property. The investigation is also pending. The original owner of the property would be decided only after completion of investigation. In the above circumstances, this Court is not inclined to interfere with order of the trial Court and this Criminal Revision Case has no merits.

8. In the result, the Criminal Revision Case is dismissed. However, liberty is given to the original owner of the property to file appropriate petition before the learned Judicial Magistrate, Melur for return of property and the learned Magistrate is directed to dispose of the petition, if filed on merits independently without influenced by any of the



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observations made in this order within one month from the date of filing
of such petition.

05.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Judicial Magistrate,
Melur.
- 2.The Inspector of Police,
Kottampatti Police Station,
Melur,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1185 of 2023

05.02.2024