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Crl.R.C(MD)No.797 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2024

Pronounced on : 31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.797 of 2024

Syed Samsudeen

... Petitioner

Vs.

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

2.Sheik Thavooth @ Sheik Dawood

... Respondents

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to set aside the order passed by the Judicial Magistrate, Melur in Crl.M.P.No.937 of 2024, dated 23.07.2024 and return the amount to the tune of Rs.50,00,000/- to the petitioner as expeditiously as possible.

For Petitioner : Mr.SMA.Jinnah

For R1 : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

For R2 : Mr.S.Manojkumar



ORDER

This Criminal Revision Case is directed against the order, dated 23.07.2024 passed in Crl.M.P.No.937 of 2024 on the file of the learned Judicial Magistrate, Melur and to return the property amount of Rs.50,00,000/- (Rupees Fifty lakhs only) to the revision petitioner on interim custody.

2. The revision petitioner is the owner of the cash of Rs.50,00,000/- (Rupees Fifty lakhs only) seized in this case. The second respondent is the 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 sent the aforesaid money through one Dinesh to the second respondent for handing over the same to Trichy A.A. Travels towards booked tickets. The second respondent along with his wife proceeded on the same day night at 12.30 p.m. in their Mahindra Car bearing Registration No.TN-64-L-2646 with acting driver Mohideen Sithik and at early hours of 1.45 a.m. when they were reaching Karungalakudi they were intercepted by two persons identifying themselves as police of Kottampatti police station and on search they took away the money. The second respondent went to Kottampatti Police and he did not find the said persons and so he 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. Thereafter, the 2nd respondent filed the petition in Crl.M.P.No.2010 of 2023 seeking for interim custody of the seized amount, but that petition was dismissed by the trial Court on 04.09.2023. Challenging the dismissal order, the second respondent filed the Criminal Revision Case in Crl.R.C(MD)No.1185 of 2023 before this Court. After hearing, this Court has also dismissed the said criminal revision with liberty to file the petition by the owner of cash as the second respondent is not the owner of the amount as per contents of F.I.R. Therefore, the petitioner has filed the petition in Crl.M.P.No.937 of 2024 before the Judicial Magistrate Court, Melur, for interim custody of the seized amount and the said petition was dismissed.

3. Aggrieved by that order, the petitioner has come forward with this present Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the first respondent and the learned counsel for the second respondent.



5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is the owner of the cash of Rs.50,00,000/- (Rupees Fifty lakhs only) seized in this case since the cash was sent by the petitioner through the defacto complainant to hand over to a travel agency at Trichy. This was clearly narrated by the second respondent, who is the defacto complainant, in his earlier petitions and the respondent police has also not raised any objection. While being so, the trial Court has declined to release the amount on interim custody to the petitioner. The Hon'ble Apex Court in **Sunderbhai Ambalal** case clearly held that "the object and scheme of the various provisions of the Code appear to be that where the property which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary". Moreover, the first respondent police has not objected in earlier proceedings of this nature of petition and also has not produced any *prima facie* rebuttal material to show that the seized amount is not belonging to the petitioner. The petitioner is an income tax assessee and he has been filing income tax returns and the recovered money is nothing but his hard earned money. The petitioner is also ready to submit an undertaking or indemnity bond as directed by the Court. But, the trial Court has not considered all these aspects, simply dismissed



the petition. Therefore, this Criminal Revision Case may be allowed and the seized cash may be returned with accrued interest to the petitioner. The petitioner is also ready to file an undertaking that he would return the same as and when required by the Court and also produce necessary sureties. In support of his argument, the petitioner's counsel relied on the following citations:

***CDJ 2018 MHC 5184 (Anvar @ Anvar Sadath
Vs. Inspector of Police, Madhukkarai Police Station,
Coimbatore)***

6. The learned Government Advocate (Crl.side) for the first respondent has not raised any strong objection and he only submitted to direct the revision petitioner to submit indemnity bond.

7. On hearing both sides, it is clear that when the second respondent/defacto complainant was taking Rs.50 lakhs, he was intercepted by the accused and taken away the money. Upon complaint made by the second respondent/defacto complainant, the first respondent registered the case and during investigation, the cash was seized by the police. Thereafter, the second respondent filed the petition for interim custody of the seized cash and the said petition was dismissed and on challenging the dismissal order, this Court made an observation with



liberty to file such petition by the original owner. Now, the petitioner claimed that he is the owner of that amount. The second respondent has not raised any objection. The trial Court has dismissed the petition filed by the petitioner on the ground that the petitioner has not filed any material to show that he is the owner of the property. On perusal of the affidavit, the petitioner has clearly stated that he is the owner of the seized amount of Rs.50 lakhs. At this juncture, a perusal of citation in **CDJ 2018 MHC 5184** relied on by the petitioner wherein, it is held in paragraph No.16 as follows:-

"16. It is not the case of the respondent that apart from the petitioner, anybody has claimed right over the seized money. Even Mohammed Basheer had not claimed any right over the money seized. On the other hand, he had stated that as per the request made by the petitioner, he sent the money through the car. Therefore, in the absence of any rebuttal proof showing that the money seized did not belong to the petitioner, the presumption is, the seized money prima facie belongs to the petitioner."

As rightly argued by the counsel for the revision petitioner, the citation is squarely applicable to the facts and circumstances of the case. Because, in this case also the respondent police has not produced any rebuttal *prima facie* proof that the seized money did not belong to the



petitioner, which is presumed that the seized money *prima facie* belongs to the petitioner.

8. The Hon'ble Supreme Court issued guidelines in the **Sunderbhai Ambalal Desai** case reported in **2003 (1) CTC 175** in respect of return of seized properties. It is clear from the records that the seized money was remanded before the trial Court under RPR.No.77/2023 and the same is now with SBI under Fixed Deposit. Considering the overall facts and circumstances of the case, this Court is inclined to allow this Criminal Revision Case subject to conditions.

9. Accordingly, this Criminal Revision Case is allowed and the order, dated 23.07.2024 passed in Crl.M.P.No.937 of 2024 on the file of the learned Judicial Magistrate, Melur in respect of return of cash of Rs.50,00,000/- (Rupees Fifty lakhs only) is hereby set aside. The cash Rs.50,00,000/- (Rupees Fifty lakhs only) remanded in RPR.No.77/2023 on the file of the Judicial Magistrate Court, Melur and now in fixed deposit of SBI is ordered to be returned to the petitioner on interim custody on the following conditions:

- (i) The petitioner shall execute a personal indemnity bond for a sum of Rs.60,00,000/- (Rupees



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Crl.R.C(MD)No.797 of 2024

Sixty Lakhs only) with one surety, who is an Income Tax Assessee for the like sum to the satisfaction of the learned Judicial Magistrate, Melur;

(ii) On execution of such bond by the petitioner, the learned Judicial Magistrate, Melur is hereby directed to hand over the entire cash of Rs.50,00,000/- (Rupees Fifty Lakhs only) to the petitioner along with accumulated interest from the bank account as the amount is in fixed deposit;

(iii) The petitioner is also directed to file an undertaking affidavit to the effect that he would be ready and willing to produce the cash as and when the Court directs.

31.01.2025

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.
(In Crime No.129 of 2023)
- 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
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